INDEX

CITATIONS

Cases—Continued.

Cases—Continued. Page

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 464

CHESTER BOWLES, AS ADMINISTRATOR OF THE OFFICE OF PRICE ADMINISTRATION, APPELLANT

v.

MRS. KATE C. WILLINGHAM AND J. R. HICKS, JR.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF GEORGIA

BRIEF FOR APPELLANT

OPINION BELOW

The District Court entered as its opinion in this case an opinion filed by it in the case of *Payne v. Griffin*, 51 F. Supp. 588 (M. D. Ga. 1943). The opinion appears at R. 26–38.

JURISDICTION

The judgment of the District Court was entered on September 1, 1943 (R. 26). The judgment was amended by order of September 14, 1943 (R. 39). Application for appeal was filed and appeal was allowed on September 30, 1943 (R. 40, 41). Prob-

able jurisdiction was noted on November 15, 1943 (R. 45). The jurisdiction of this Court rests on the Act of August 24, 1937, 50 Stat. 752, 28 U. S. C. Sec. 349a.

QUESTIONS PRESENTED

1. Whether the Emergency Price Control Act of 1942 delegates legislative power in respect of rent control in violation of Article 1, Section 1 of the Constitution.

2. Whether the Act, as here applied, satisfies the requirements of procedural due process.

3. Whether Section 265 of the Judicial Code bars this suit by the Administrator for injunctive relief.

STATUTES AND REGULATIONS INVOLVED

In the Appendix will be found the text of the Emergency Price Control Act of 1942, 56 Stat. 23, 50 U. S. C. App. 901; a "typical" maximum rent regulation; and Revised Procedural Regulation No. 3, issued January 12, 1943, as amended, 8 Fed. Reg. 526, 1798, 3534, 5481, 14811. The rent regulation as printed is in all material respects the same as Maximum Rent Regulation No. 26, issued June 30, 1942, 7 Fed. Reg. 4905, here involved. The Designation of 28 Defense Rental Areas and Rent Declaration Relating to Such Areas, issued April 28, 1942, preceding the issuance of Maximum Rent Regulation No. 26, will be found in 7 Fed. Reg. 3193.

STATEMENT

This is a direct appeal by the Administrator of the Office of Price Administration from a judgment of the District Court of the United States for the Middle District of Georgia, dismissing the Administrator's complaint for an injunction to restrain defendants, appellees herein, from violating the Emergency Price Control Act and interfering with its administration or with the effectuation of its policies by obstructing, through the injunctive processes of a state court, the issuance of rent reduction orders under the Act. By order of September 1, 1943, the district court, sustaining defendant's motion to dismiss, dismissed the Administrator's suit on the ground that the rent provisions of the Act, and the regulations thereunder, are unconstitutional for the reasons stated in the opinion filed by the court the same day in *Payne* v. *Griffin* (R. 16–20, 21–26, 26–38). The history of the present proceeding is as follows.

1. The Rent Regulation, the Rent Reduction Orders, and the State Court Proceedings

On April 28, 1942, the Administrator, pursuant to Section 2 (b) of the Act, issued a Designation and Rent Declaration which set forth the Administrator's findings concerning the necessity for control and stabilization of rents in twenty-eight areas in various parts of the country, embodied recommendations for this purpose which might be

acted on by State and local agencies, and designated these areas as "Defense-Rental Areas."[1] Included in this group of Defense-Rental Areas was the Macon, Georgia, Area (7 F. R. 3193).

On June 30, 1942, the Administrator, finding that rents had not been stabilized or reduced in the Macon Defense-Rental Area by State or local regulation, or otherwise, issued Maximum Rent Regulation No. 26, effective July 1, 1942, establishing the maximum legal rents for housing accommodations in the area (7 F. R. 4905; Rent Reg., *infra*). In accordance with the provision of the Act (Sec. 2 (b)) that due consideration be given to rents prevailing on or about April 1, 1941, Maximum Rent Regulation No. 26 established April 1, 1941, as the base date for maximum legal rents in the area; rents in effect on that date were to be the maximum legal rents (Rent Reg., *infra*, Sec. 4 (a)). The Administrator's duties under the Regulation were vested in a Rent Director for the area (Act, Sec. 201 (b); Regula-

[1] The issuance of a Designation and Rent Declaration with respect to these Defense Rental Areas was part of a simultaneous nationwide designation of 302 areas, the first large-scale formal action taken under the statute looking to the control and stabilization of rents during the present war. Twenty-one areas had been previously designated (7 F. R. 1675–1694, 2598). The 28 areas mentioned in the text were designated separately from other groups of areas among the 302 on the basis of the respective base dates recommended by the Administrator, i. e., the respective dates recommended as marking proper pre-inflationary levels for maximum legal rents under the Act in the several groups of areas.

tion, Sec. 1388.1713 (2), (3); Rent Reg., *infra*, Sec. 13 (1), (2)).[2]

As respects housing accommodations not rented on April 1, 1941, but rented for the first time between that date and the effective date of the Regulation, July 1, 1942—the situation involved in this suit—the Regulation provided that the maximum legal rent should be the first rent charged after April 1, 1941; but that the Administrator (by designation, the Rent Director) might order a decrease on his own initiative on the ground, among others, that the rent was higher than that generally prevailing in the Defense-Rental Area for comparable accommodations on April 1, 1941 (Secs. 1388.1704 (c), 1388.1705 (c) (1); Rent Reg., *infra*, Secs. 4 (c), 5 (c) (1)). By a separate procedural regulation issued pursuant to Sections 203 and 201 (d) of the Act (Revised Procedural Regulation No. 3, as amended, 8 F. R. 526, 1798, 3534, 5481, 14811, Secs. 1300.207, 1300.209, 1300.210, subpart C, Proc. Reg., *infra*), provision is made for notice to the landlord in such cases, and for administrative review of action adverse to the landlord.[3]

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[2] *Avant et al.* v. *Bowles*, now pending in the Emergency Court of Appeals (Docket No. 63, submitted October 1943), raises questions as to the validity of Maximum Rent Regulation No. 26, including the question as to the validity of the Administrator's selection of the base date. The appellees herein are not parties to the *Avant* proceeding.

[3] The procedure for judicial review is governed by Section 204 of the Act. The review procedure, administrative and judicial, is more fully described at pp. 31–36, *infra*.

On June 14 and 15, 1943, the Rent Director for the Macon area sent written notices to Mrs. Kate C. Willingham, appellee herein, stating that, on the basis of a preliminary investigation with respect to housing accommodations owned by her at 20 Arlington Place, Macon, consisting of three apartments, two unfurnished and one furnished, which had not been rented on April 1, 1941, but were first rented on July 1 and August 1, 1941, respectively, the Rent Director proposed, pursuant to Section 1388.1705 (c) (1) of the Regulation (Rent Reg., *infra*, Sec. 5 (c) (1)), to decrease the maximum rents for these apartments respectively from $40.00 to $27.50, from $37.50 to $25.00, and from $60.00 to $37.50 per month, on the ground that the first rents for these apartments received after April 1, 1941, were in excess of those generally prevailing in the area for comparable accommodations on April 1, 1941. The notices further advised Mrs. Willingham that she might file objections supported by written evidence within five days from the date of notice; and that if such filing were not made within the five days the Rent Director proposed to enter an order decreasing the maximum rent. (R. 12–13.)[4] Thereafter Mrs. Willingham filed her objections and supporting affidavits. On July 5, 1943, the Rent

[4] Mrs. Willingham wrote on June 15 and 16, 1943 objecting informally and generally to the proposed rent reduction orders. This fact does not appear in the pleadings.

Director advised Mrs. Willingham in writing that he would proceed to issue an order as soon as practicable. (R. 2–3, 12–13.)

Before the Rent Director issued an order, Mrs. Willingham filed a petition in the Superior Court of Bibb County, Georgia,[5] setting forth in substance the proceedings described above with respect to the proposed orders; averring that the orders had not yet been issued, that petitioner would not have an adequate remedy at law if they should be issued, and that the orders, the Rent Regulation and the Act are unconstitutional on various grounds; and praying that the Rent Director be restrained from issuing the proposed orders or any orders reducing the rents for petitioner's property at 20 Arlington Place, Macon (R. 9–16). The Superior Court on July 14, 1943, entered, *ex parte*, a restraining order as prayed, effective until further order of the court; and further ordered the Rent Director to show cause on September 6, 1943, why an injunction should not issue (R. 16).

2. The Proceedings Below

The Administrator's complaint was filed in the district court on July 20, 1943 (R. 1), and was amended on August 16, 1943 (R. 7–9). The complaint set forth the facts with respect to the rent

[5] The Administrator's complaint incorrectly states (R. 3) that the petition was filed before the expiration of the five-day period prescribed in the notices of June 14 and 15, 1943, *supra*.

reduction order proceedings and the State court suit essentially as heretofore stated (R. 2–3); averred that, in the judgment of the Administrator, defendant Willingham had thereby engaged in acts and practices which constituted violations and attempted violations of the Act and the Regulation (R. 1–2, 3); and averred that defendant Hicks is the elected Sheriff of Bibb County, Georgia (R. 3). The complaint further alleged that the restraining order entered by the State court is void for lack of jurisdiction of the subject matter in view of the provisions of Section 204 (d) of the Act (R. 3). The complaint invoked the injunctive processes of the District Court pursuant to Section 205 (a) of the Act and pursuant to Section 24 (1) of the Judicial Code, respectively, (1) to restrain violations and attempted violations of the Act and Regulation, and to enforce compliance therewith (R. 2, 7); and (2) "to effectuate the public policy of a statute of the United States" (R. 3, 7). The complaint averred that the Administrator was without an adequate remedy at law and would suffer irreparable damage "in the disruption and obstruction of the rent control program within the United States" unless the court intervened in his behalf (R. 3). A preliminary and final injunction was prayed to restrain defendant Willingham from further prosecution of the State court proceedings and from further acts and practices in violation of the Emergency Price

Control Act and Maximum Rent Regulation No. 26, and to restrain defendant Hicks from executing or attempting to execute any orders in the State court proceedings (R. 4).

Defendant Willingham filed an answer and amendment thereto admitting the essential allegations of fact in the complaint, denying violation of the law, and raising issues of law (R. 16–20, 21–26). Defendant Hicks filed an answer averring that the complaint failed to state a cause of action against him (R. 20). Both defendants prayed for a dismissal of the complaint (R. 19, 20).[6] The answer of defendant Willingham alleged that the complaint failed to state a cause of action in that defendant had not violated the law but had merely invoked the injunctive processes of the State court to restrain the performance of unlawful acts by the Rent Director (R. 17, 18); that the relief sought by the complaint was barred by Section 265 of the Judicial Code (R. 17); that Section 2 (b) of the Act is unconstitutional as involving an unlawful delegation of legislative power (R. 21–22, 24–25); that Section 204 (d) of the Act, as applied to the State court proceeding, is unconstitutional as a violation of Article VI of the Constitution (R.

[6] The answer of the defendant Willingham also prayed that the Administrator and his officers be restrained from issuing the orders involved in the State court proceedings for the reasons set out in the petition in that proceeding (R. 9–16, 20).

18–19, 23–24); that Section 204 (d), "as applied to this Court under the circumstances of this case" is unconstitutional (R. 25–26);[7] that Maximum Rent Regulation No. 26 is unconstitutional and void as a violation of the Fifth Amendment, as constituting an improper delegation of legislative and judicial power, as being too vague and indefinite to be enforceable, and as being "not in accordance with the law" (R. 18, 23); and that the proposed rent reduction orders are unconstitutional and void as a violation of the Fifth Amendment, as involving an improper delegation of judicial power, and as involving an improper subdelegation of power (R. 25).

The opinion of the district court in the case of *Payne* v. *Griffin, supra,* incorporated into the record of this case as the basis for the order of September 1, 1943, dismissing the complaint herein (R. 26–38), did not embrace all of the issues raised by the defendants below in this case. *Payne* v. *Griffin* was a tenant's action for statutory damages pursuant to Section 205 (e) of the Act, in which the Administrator intervened. The opinion held the rent provisions of the Act (Sec. 2 (b)) unconstitutional on the ground of improper delegation of legislative power (R. 31–38). The reasoning of the opinion in this regard, insofar as it refers to questions of notice and hearing, suggests that the court may also have intended to

[7] This allegation appears in the prayer of the amendment to the answer.

hold the review provisions of the Act (Secs. 203, 204) unconstitutional for failure to afford due process (R. 36–37). Finally, the opinion held that Section 204 (d) of the Act could not validly confine to the Emergency Court of Appeals a challenge to the validity of the statute and, derivatively, of the regulation (R. 26–31). The decision on the latter point in *Payne* v. *Griffin* was addressed to a construction of Section 204 (d) advanced by the tenant, with which the Administrator, as intervener, was not in agreement. The tenant had urged that Section 204 (d) barred the landlord's defensive attack on the constitutionality of the Act. The Administrator conceded (and the Government has always taken the position) that the statute, as distinct from the Regulation, is open to attack in such a suit. Thus, the issue of delegation of power, which the court below treated as decisive, was concededly open to adjudication. Accordingly, the materiality in the present case of the district court's ruling in *Payne* v. *Griffin* with respect to Section 204 (d) seems doubtful. Also, the Administrator moved for an amendment of the order of September 1, 1943, to take cognizance of the fact that the present action involved an aspect of Section 204 (d) not present in *Payne* v. *Griffin*, namely, the provision whereby State courts (together with Federal courts except the Emergency Court of Appeals) are prohibited from assuming jurisdiction of a

suit to restrain or set aside the rent regulations or the rent provisions of the Act or to restrain the enforcement thereof (R. 38–40). The district court, acting upon the motion, amended its order of September 1, 1943, by adding thereto a statement to the effect that the court does not deem it necessary to decide and does not decide whether Section 204 (d) of the Act is unconstitutional insofar as it may operate to restrict the jurisdiction of the Superior Court of Bibb County, Georgia, in the suit brought by defendent Willingham against the Rent Director (R. 39).

This appeal followed.

SUMMARY OF ARGUMENT

I

The rent control provisions of the Act do not unlawfully delegate legislative power to the Administrator. It would manifestly have been impractical for Congress to have undertaken the specific control of maximum rents for housing accommodations throughout the country. The policies and standards laid down bring the Act well within the limits of permissible delegation. The rents fixed must not only be generally fair and equitable and effectuate the purposes of the Act, but in addition they are to be established in the light of rents actually prevailing in an area as of the focal date April 1, 1941. In no event may the Administrator employ a base date

earlier than April 1, 1940. The Administrator must make adjustments for relevant factors of general applicability, including changes in property taxes and other costs.

While it is not essential that the statute require findings in advance of the issuance of a regulation, Section 2 (b) of the Act requires that a rent declaration shall set forth the necessity for the stabilization or reduction of rents for defense area housing accommodations within a particular defense rental area. In fact, the Administrator made findings both in the rent declaration and in the maximum rent regulation itself. Also, in denying a protest against a regulation the Administrator is required to state the grounds of his decision and the economic data and other facts of which he has taken official notice.

There is no constitutional requirement of advance hearings in order that a delegation of power may be sustained. The question of notice and hearing relates rather to the issue of procedural due process.

II

The requirements of procedural due process are satisfied. Section 204 (d) of the Act forbids challenges to regulations in any court except the Emergency Court of Appeals, but it does not preclude a defense based on the invalidity of the statute itself. Since the issue of delegation of power was held decisive by the court below, the

limitation in Section 204 (d) did not come into operation. Section 204 (d) also withdraws from the state courts, and from federal courts other than the Emergency Court of Appeals, jurisdiction to enjoin the enforcement of the Act or regulations thereunder; the validity of the withdrawal of jurisdiction from the state courts was expressly pretermitted by the court below. In any event, it is beyond challenge that Congress has power under Article III to confer upon a federal court exclusive jurisdiction of cases arising under the Constitution or laws of the United States. *Tennessee* v. *Davis*, 100 U. S. 257; *Venner* v. *Michigan Central Railroad Company*, 271 U. S. 127. See *Kittrell* v. *Hatter*, 10 So. (2d) 827 (Ala. 1942).

The opinion below suggests that there is no adequate requirement in the statute of notice and hearing. With respect to the projected rent reduction order here involved, this objection has no pertinence, since Procedural Regulation No. 3 requires notice to the landlord, and the latter was in fact given notice and an opportunity to present objections. There are, moreover, detailed provisions for review of the Rent Director's action. With respect to the basic rent regulation itself, there is no constitutional requirement that its issuance be preceded by notice and hearing. Cf. *Bi-Metallic Co.* v. *Colorado*, 239 U. S. 441, 445. It is a general regulation addressed to large numbers

of persons and prescribing standards for the future. It is comparable to regulations prescribing medical and occupational standards under the Selective Service law. It was thought by Congress to be particularly necessary that regulations under the present Act should not await the holding of formal hearings, lest an opportunity for hearings become an opportunity for price rises and speculative disturbances. Comprehensive provisions for hearing in connection with protests after the issuance of a basic regulation are contained in the statute and the applicable procedural regulations. This procedure was not availed of by the appellee landlord.

III

The present suit by the Administrator is not barred by Section 265 of the Judicial Code. This question was not passed on below. Numerous federal courts have held that the Administrator is not prohibited from enjoining the further prosecution of eviction suits brought by landlords in the state courts. Those decisions are sound and are applicable here. The legislative policy expressed in Section 265 must be considered in conjunction with the provisions of the Price Control Act, particularly those provisions giving the Administrator power to bring injunction suits to enforce compliance, and those withdrawing from

all courts, including state courts, other than the Emergency Court of Appeals, jurisdiction to restrain the enforcement of the Act or regulations thereunder.

The present suit by the Administrator seeks to compel compliance on the part of a landlord who has attempted to set at naught the provisions of the applicable rent regulation. The landlord has maintained rentals in excess of those about to be prescribed by the Rent Director, and has done so during the pendency of a challenge to the Rent Director's authority, whereas the Act demands that rent and price orders be obeyed during the progress of litigation challenging them. An effective order of compliance pursuant to Section 205 (a) of the Act must include a provision directing the landlord to abandon the state court suit and thus permit the administrative action to be completed.

Furthermore, the express withdrawal of jurisdiction from the state courts by Section 204 (d) makes inapplicable the rule of comity laid down by Section 265 of the Judicial Code. The case is therefore like those discussed in *Toucey* v. *New York Life Insurance Co.*, 314 U. S. 118, 132–134, in which Congressional legislation has been deemed to qualify Section 265.

ARGUMENT

I

THE RENT CONTROL PROVISIONS OF THE ACT DO NOT UNLAWFULLY DELEGATE LEGISLATIVE POWER TO THE ADMINISTRATOR

The court below characterized the rent control provisions of the Act as a delegation to the executive branch "to determine what the law shall be" (R. 31). Fixing attention on the provision directing the Administrator to establish maximum rents at "generally fair and equitable" levels, the court held that the authority is vitiated by the asserted failure of the Act to require administrative hearings in advance of the issuance of rent regulations and, upon such issuance, to make accompanying findings (R. 32–38). The decision below would add a third statute to the number of those heretofore held invalid on the ground of delegation of power. *Panama Refining Co.* v. *Ryan,* 293 U. S. 388; *Schechter Poultry Corp.* v. *United States,* 295 U. S. 495. The decision would for the first time in our history set aside a delegation of authority to an independent administrative agency. In rendering so grave a decision the court below, it is respectfully submitted, failed to give due significance to the decisions of this Court, to the provisions of the Act itself, and to the administrative action taken thereunder.

A precise formulation of the outer limits of lawful delegation is unnecessary to this case. The degree of detail with which Congress is obliged to describe its policies and standards must, of course, vary with the character of the subject of regulation. The proper bounds of delegability "must be fixed according to common sense and the inherent necessities of the governmental co-ordination" (*Hampton & Co.* v. *United States*, 276 U. S. 394, 406). This is preeminently so when "dealing with legislation involving questions of economic adjustment." *United States* v. *Rock Royal Co-op.*, 307 U. S. 533, 574. "The Constitution, viewed as a continuously operative charter of government, is not to be interpreted as demanding the impossible or the impracticable." *Opp Cotton Mills* v. *Administrator*, 312 U. S. 126, 145; cf. *Buttfield* v. *Stranahan*, 192 U. S. 470.

The present Act is safely within the permitted limits. We have here the kind of situation, like rate making, price fixing, and setting of wage rates, where delegation by Congress has become traditional. In undertaking to aid in the prevention of wartime inflation through the control of rents as part of a general price and rent control program, the task must be done for a large and populous country, with many congested population centers, each with its shifting and local problems. Plainly this is the type of function which demands consideration of, and accommoda-

tion to, complex economic factors. It is impracticable for Congress itself to undertake these functions in all-embracing and definitive legislation. Congress may appropriately, therefore, set the policies and standards, and leave implementation and execution to the agency charged with administration. Cf. *Buttfield* v. *Stranahan*, 192 U. S. 470, 496; *Union Bridge Co.* v. *United States*, 204 U. S. 364, 386.

We turn to the specific provisions of the Act itself. In no sense can they be said to authorize the Administrator to exercise an uncontrolled discretion in fixing rent levels. Section 2 (b) not only requires that the rents fixed be "generally fair and equitable," and "effectuate the purposes of this Act," but in addition, in contrast to the usual provisions governing rate making, price fixing, and wage determinations, which contain the familiar requirements of fairness, equity, or reasonableness, there is here a sharp limitation in terms of time, that is, in terms of rents actually prevailing as of a given date. The Act designates April 1, 1941, as the date by which the Administrator is ordinarily to be guided in fixing rent levels. This base date may vary, under the Act, if "defense activities" have caused or threatened to cause increases calling for a different base date. In no event, however, may the Administrator employ a base date earlier than April 1, 1940. There is thus an absolute limit on the Adminis-

trator's discretion in selecting base dates which go back to a preinflationary period. And here, in fact, the base date adopted by the Administrator in issuing the instant regulation is April 1, 1941, the focal date prescribed in the Act.

In establishing base period rents, the Administrator must also make "adjustments" for "relevant factors" which he determines to be "of general applicability," including changes in property taxes and other "costs."[8] And the Administrator must give consideration to the recommendations of state and local officials (Sec. 2 (b)).

It is submitted that the standards governing determination of rent levels under the present Act—the provision that rents shall be "generally

[8] It would have been wholly impracticable for Congress to attempt to establish rigid rules specifying in advance the weight to be given to each factor which the Administrator considers in fixing maximum rents, or to enumerate all the "relevant factors" which the Administrator is to consider in adjusting base dates. *Opp Cotton Mills* v. *Administrator*, 312 U. S. 126, 145–146. The "relevant factors" which Congress necessarily declined to restrict by enumerating them in greater detail derive meaning from the clearly expressed statutory objectives. Cf. *Pittsburgh Plate Glass Co.* v. *Nat'l Labor Relations Board*, 313 U. S. 146, 165–166. The relative importance of any of these factors in a particular instance can be determined only on the basis of a study of the varying facts in each case. Other statutes upheld by this Court have provided for precisely this type of flexibility of administration. *Opp Cotton Mills* v. *Administrator*, *supra*; *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381; *United States* v. *Rock Royal Co-op.*, 307 U. S. 533; *Mulford* v. *Smith*, 307 U. S. 38.

fair and equitable" and the companion provisions described above—are wholly adequate. They have been stated with precision in the Act. Indeed a far broader delegation would scarcely have been improper in view of the need for administrative flexibility in carrying out a statutory plan of the type embodied in the rent provisions of this Act. The present standards are more specific and detailed than those contained in numerous other statutes which have been approved by this Court.[9]

[9] *United States* v. *Rock Royal Co-op*, 307 U. S. 533, involved a delegation of authority to the Secretary of Agriculture authorizing him to set minimum milk prices based on parity, but adjustable if parity is found to be unreasonable in view of prices of food and in view of economic conditions affecting supply and demand. (7 U. S. C. sec. 608c (18).) *Opp Cotton Mills* v. *Administrator*, 312 U. S. 126, involved a delegation of authority providing that the Administrator of the Fair Labor Standards Act and the Industry Committees established thereunder should set for various classifications within the industry the highest minimum wage effectuating the purpose of the Act—the statutory goal of 40 cents per hour—which "(1) will not substantially curtail employment * * * and (2) will not give a competitive advantage to any group in the industry * * *" (29 U. S. C. 208 (c), 208 (d)).. In *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381, the Court upheld the Bituminous Coal Act of 1937, providing for maximum coal prices which reflect a reasonable return on the fair value of the property, and for minimum prices which are governed by standards requiring computation of the weighted average cost for each minimum price area and classification of coal on a basis which is just and equitable to producers and gives due regard to the interest of the consuming public. (15 U. S. C. sec. 833 (a).) Compare also *Mulford* v. *Smith*, 307 U. S. 38; *Currin* v. *Wallace*, 306 U. S. 1. Compare also the standards upheld in the following decisions: *New York Central Securities Co.* v. *United States*,

And they have been approved with impressive accord by numerous federal and state courts.[10] Moreover, the Administrator's decision as to what

287 U. S. 12 ("in the public interest"); *Radio Comm'n* v. *Nelson Bros. Co.*, 289 U. S. 266 ("Public convenience, interest, or necessity"); *United States* v. *Chemical Foundation*, 272 U. S. 1 ("in the public interest"); *Colorado* v. *United States*, 271 U. S. 153, and *Ches. & Ohio Ry.* v. *United States*, 283 U. S. 35 ("certificates of public convenience and necessity"); *Tagg Bros. & Moorhead* v. *United States*, 280 U. S. 420 ("just and reasonable" commissions); *Buttfield* v. *Stranahan*, 192 U. S. 470 ("purity, quality, and fitness for consumption"); *Union Bridge Co.* v. *United States*, 204 U. S. 364, and *Monongahela Bridge* v. *United States*, 216 U. S. 177 ("unreasonable obstruction to navigation"); *Mahler* v. *Eby*, 264 U. S. 32 ("undesirable resident").

[10] The delegation of power to control rents has been upheld in the following cases: *Taylor* v. *Brown*, 137 F. (2d) 654 (E. C. A. 1943), cert. denied, No. 305, 1943 Term; *Brown* v. *Wright*, 137 F. (2d) 484 (C. C. A. 4th, 1943); *Henderson* v. *Kimmel*, 47 F. Supp. 635 (D. Kan. 1942); *Brown* v. *Wick*, 48 F. Supp. 887 (E. D. Mich. 1943); *Brown* v. *Warner Holding Co.*, 50 F. Supp. 593 (D. Minn. 1943); *Bias* v. *Sankey* (Brown, Intervenor), decided March 29, 1943, N. D. Ill., not yet reported; *United States* v. *Erlich*, decided April 13, 1943, S. D. Fla., not yet reported; *Brown* v. *Winter*, 50 F. Supp. 804 (W. D. Wis. 1943); *Brown* v. *Douglass*, N. D. Tex. July 17, 1943, OPA Serv. 622:228; *Pratt* v. *Hollenbeck*, Ct. of Com. Pleas, Erie County, Pa., April 22, 1943, OPA Serv. 622:109; *Home Protective Savings & Loan Ass'n* v. *Robinson*, Ct. of Com. Pleas, Beaver County, Pa., May 11, 1943, OPA Serv. 622:122; *Murphy* v. *Milner Hotels*, Ct. of Common Pleas, Tulsa County, Okla., OPA Serv. 622:271. The single decision to the contrary, *Roach* v. *Johnson*, 48 F. Supp. 633 (N. D. Ind. 1943), was vacated by this Court, 319 U. S. 302.

The price control provisions of the Act have similarly been sustained in numerous cases as against an attack based on delegation of power: *Rottenberg* v. *United States*, 137 F. (2d) 850 (C. C. A. 1st, 1943), pending on certiorari No. 375, present

rents are "generally fair and equitable" is subject to judicial scrutiny in the exclusive statutory forum (Section 204).

Administrative findings and the issue of delegation.—The relevancy of the presence or absence of findings to the issue of delegation is dubious at best.[11] The question is more properly one going to

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Term; *United States* v. *C. Thomas Stores*, 49 F. Supp. 111 (D. Minn. 1943); *United States* v. *Slobodkin*, 48 F. Supp. 913 (D. Mass. 1943); *United States* v. *Hark*, 49 F. Supp. 95 (D. Mass. 1943), pending on appeal, No. 83, present term; *United States* v. *Charney*, 50 F. Supp. 581 (D. Mass. 1942); *United States* v. *Sosnowitz*, 50 F. Supp. 586 (D. Conn. 1943); *United States* v. *Friedman*, 50 F. Supp. 584 (D. Conn. 1943); *Brown* v. *Ayello*, 50 F. Supp. 391 (N. D. Cal. 1943); *United States* v. *Krupnick*, 51 F. Supp. 982 (D. N. J. 1943); *United States* v. *Fitzsimmons Stores, Ltd.*, S. D. Cal., 1943, OPA Service 620: 210; *Brown* v. *Liniavski* (S. D. N. Y.), decided Dec. 13, 1943, not yet reported; *Brown* v. *W. T. Grant Co.* (S. D. N. Y.), decided Dec. 14, 1943, not yet reported; *Miller* v. *Municipal Court*, S. Ct. Calif., Sept. 30, 1943, OPA Service 620: 231.

[11] Whether there are findings would not seem to be determinative of the question whether a statute embodies sufficient standards to keep it within the constitutional bounds of Article 1, Section 1. There is language to the contrary in *Wichita Railroad & Light Co.* v. *Public Utilities Commission*, 260 U. S. 48, 59, and in *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, 431–432. Neither case is persuasive here. The former involved a rate order directed to an individual company; the precise question was whether a rate order unaccompanied by findings was valid under a statute which required, as a condition precedent to orders changing rates, a *finding* that existing rates are unjust, unreasonable, discriminatory, or preferential. Wholly apart from any question of delegation, therefore, it is apparent that the absence of required findings vitiated the order. In the *Panama Refining* case, the Court seems to have held the order

the validity of an order or regulation unaccompanied by findings. This question, of course, is reserved for the Emergency Court of Appeals under Section 204 of the Act. In any event, we are aware of no principle which conditions a statute's validity upon an express requirement that findings be made. Indeed, the contrary is implicit in the holdings of this Court. This Court has treated the issue of findings as a statutory question—whether, if the statute requires findings, that requirement has properly been fulfilled. If the statutory requirement has not been met, the order has been held invalid. E. g., *United States* v. *Baltimore & Ohio R. Co.*, 293 U. S. 454; *Mahler* v. *Eby*, 264 U. S. 32. And the Court has sustained the constitutionality of statutes which made no provision for findings and where no finding was made. E. g., *Martin* v. *Mott*, 12 Wheat. 19; *United States* v. *Grimaud*, 220 U. S. 506. Cf. *Pacific States Box & Basket Co.* v. *White*, 296 U. S. 176, 185–186; *Thompson* v. *Consolidated Gas Co.*, 300 U. S. 55, 69.[12]

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under consideration invalid on two independent grounds: (1) the absence of standards; and (2) the absence of findings. The two issues were treated separately. While it is true that in the course of discussion of the second issue, the Court used language relating findings to delegation, there is no explicit formulation of such a doctrine. See Gellhorn, *Administrative Law—Cases and Comments* (1940), p. 783, note 2.

[12] In *Opp Cotton Mills* v. *Administrator*, 312 U. S. 126, this Court stated (p. 144):

"* * * But where, as in the present case, the standards set up for the guidance of the administrative agency, the

Section 2 (b) of the present Act provides that the Administrator's Rent Declaration must set forth "the necessity for * * * the stabilization or reduction of rents for any defense-area housing accommodations within a particular defense-rental area".[13] Thus, there is an express requirement that findings accompany the step which initiates action. While it is true that the Act does not expressly duplicate this requirement in respect of the maximum rent regulation itself, it is nevertheless true that, if such a statutory requirement were necessary to the validity of the Act, which it is not, it may be supplied by implication. For while a statute may be invalid because it may require something to be done which is forbidden by the Constitution, "it cannot be essential to the validity of a statute that it should enjoin obedience to the Constitution." *Railroad Commissioners* v. *Columbia, N. & L. R. Co.*, 82 S. C. 418, 423, 64 S. E. 240, 242 (1909). Cf. *Toombs* v. *Citizens' Bank*, 281 U. S. 643; *Paulsen* v. *Portland*, 149 U. S. 30; *The Japanese Immigrant Case*, 189 U. S. 86.

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procedure which it is directed to follow and the record of its action which is required by the statute to be kept *or which is in fact preserved*, are such that Congress, the courts and the public can ascertain whether the agency has conformed to the standards which Congress has prescribed, there is no failure of performance of the legislative function." [Italics added.]

[13] The findings thus required are analogous to the "statement of the considerations" which must accompany price regulations under Section 2 (a) of the Act.

In point of fact the Administrator here made express findings in his Rent Declaration and in the Maximum Rent Regulation (Rent Reg., *infra*). It will be noted that subsidiary facts are set forth in the initial Declaration both as to the need for rent control in the area and as to the selection of April 1, 1941, as the base date. It should be further observed that as a preliminary to judicial review of a regulation under Section 204 of the Act, administrative proceedings will have been had under Section 203, and in such proceedings the Administrator's denial of a protest against the Regulation must be accompanied by a statement of the grounds upon which his decision is based and the economic data and other facts of which he has taken official notice.

In these circumstances, even assuming that an express requirement of findings were necessary to the constitutional validity of a statute, appellee Willingham is precluded on familiar grounds from making her attack. She has no standing to complain, inasmuch as she is not injured by the asserted statutory omission of a requirement of findings. As this Court has stated, a person who has actually received notice cannot complain of a statute's failure to specify that notice be given. "Other persons * * * whose rights might be injuriously affected by the decision, might lawfully complain of the unconstitutionality of an act which would deprive them of their

property without notice; but it is difficult to see how the petitioner would be affected by it." *Tyler* v. *Judges of Court of Registration,* 179 U. S. 405, 410. Cf. *Corporation Commission* v. *Lowe,* 281 U. S. 431; *Hatch* v. *Reardon,* 204 U. S. 152; *Hirabayashi* v. *United States,* 320 U. S. 81. And again, any attack upon the particular regulation on the ground that it was not accompanied by proper findings is remitted by Section 204 (d) of the Act to a forum other than the court below.

Administrative hearings and the issue of delegation.—Whether a hearing must precede the issuance of a Maximum Rent Regulation is a question of due process. See pp. 32–36, *infra.* The falacious notion that hearings in advance of discretionary administrative action are an element in proper delegation of legislative authority arises out of a mistaken application of language appearing in *Schechter Poultry Corp.* v. *United States,* 295 U. S. 495, 539, 540. The Court in that case referred to such hearings not as an integral feature of every delegation of authority which leaves some discretion in the hands of the executive, but simply as an aid in giving content and meaning to the undefined phrase "unfair competitive practices" appearing in the statute involved in that case. The Court referred to other statutes containing similar phraseology where the objection of vagueness was obviated by

means of hearings in which the statutory language received a more concrete formulation. There is no comparable question under the present Act, since, as we have seen, the statutory objectives and standards are stated with ample detail and precision.[14]

II

The Requirements of Procedural Due Process Are Satisfied

Such issues of procedural due process as the present case may involve are somewhat uncertainly drawn on this appeal.

1. The application of Section 204 (d) to this suit by the Administrator is not properly drawn in question by the decision below. The Government has taken the position that Section 204 (d), in forbidding attacks upon regulations in any court save the Emergency Court of Appeals, does not preclude an attack on the statute itself. This

[14] There is no hearing provision for dissatisfied parties in either the Tobacco Inspection Act upheld in *Currin* v. *Wallace*, *supra*, or the tobacco marketing quota provisions of the Agricultural Adjustment Act upheld in *Mulford* v. *Smith*, *supra*. A referendum is required in each instance before the Secretary's order becomes operative, but the disapproving minority have no opportunity to present their views before the administrative officer. But even assuming that an advance hearing is ordinarily required, the postponement of such hearing until after a regulation is effective would be justified here by the extraordinary circumstances which gave rise to the Emergency Price Control Act and by the necessity for eliminating delays in putting the regulations into effect. See pp. 34–35, *infra*.

position is supported by the language of the section and by its legislative history.[15] The constitutional question of delegation of power was thus within the permissible scope of the district court's inquiry, and since that question was found to be decisive, the limitations of Section 204 (d) did not come into operation. The question of their application to prevent an attack on particular regulations, in enforcement proceedings brought by the Government, is before the Court in the *Yakus* and *Rottenberg* cases, Nos. 374 and 375.

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[15] The Senate Committee on Banking and Currency, in favorably reporting the bill which contained the provisions of Section 204 (d), stated (S. Rep. 931, 77th Cong., 2d sess., pp. 24–25):

"Section 204 (d) further provides expressly that no court, other than the Emergency Court and the Supreme Court, shall have jurisdiction or power to consider the validity, constitutional or otherwise, of any regulation or order issued under section 2. It also provides that no court, except as provided in section 204, shall have jurisdiction or power to stay, restrain, enjoin, or set aside (whether by declaratory judgment or otherwise) any provision of the bill authorizing the issuance of such regulation or order, or to restrain or enjoin the enforcement of any provision of any such regulation or order. Thus the bill provides for exclusive jurisdiction in the Emergency Court and in the Supreme Court to determine the validity of regulations or orders issued under section 2. *Of course, the courts in which criminal or civil enforcement proceedings are brought have jurisdiction, concurrently with the Emergency Court, to determine the constitutional validity of the statute itself.*" [Italics supplied.]

The bill thus reported to the Senate, whose pertinent provisions were adopted, differed significantly from the bill as

2. The application of Section 204 (d) in withdrawing from state courts (and federal courts other than the Emergency Court of Appeals) jurisdiction to enjoin the enforcement of the Act or regulations thereunder, presented a question which was expressly pretermitted by the court below (R. 39). Should the question be pressed and considered here, it is enough to say that the power of Congress under Article III of the Constitution to grant jurisdiction over cases arising under the Constitution or laws of the United States to a federal tribunal, to the exclusion of state courts, is beyond challenge. *Tennessee* v. *Davis*, 100 U. S. 257; see *Kittrell* v. *Hatter*, 10 So. (2d) 827 (Ala. 1942). Indeed, the power of Congress has additional support in the situation here presented, since the state court proceeding is in substance a suit against the United States to restrain the performance of official duties even before the completion of the administrative process. In *Venner* v. *Michigan Central Railroad Company*, 271 U. S. 127, the Court gave effect to the denial of jurisdiction to the state courts to set aside an

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introduced in the House; in its original form Section 204 (d) provided: "The Emergency Court of Appeals, and the Supreme Court upon review of judgments of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any ceiling regulation or order, *and of the provisions of this Act authorizing* such regulation or order." [Italics supplied.] H. R. 5479, 77th Cong. 1st sess., printed in Hearings before Committee on Banking and Currency, House of Rep., 77th Cong. 1st sess., on H. R. 5479, pp. 4, 7–8.

order of the Interstate Commerce Commission. See also *Lambert Run Coal Company* v. *Baltimore & Ohio Railroad Company*, 258 U. S. 377. The same result is, of course, familiar in the case of suits to enjoin orders of many other federal administrative agencies.

3. There remain the issues concerning notice and hearing suggested by the observations of the district court in its discussion of the question of delegation of power (R. 37–38). Here again some further analysis of the issues in their present setting is necessary. No question could be raised concerning a requirement of notice and hearing prior to the issuance of the projected rent reduction order here involved, for Revised Procedural Regulation No. 3 provided (Section 1300.207) that before entering an order on his own initiative the Rent Director shall serve a notice upon the landlord stating the proposed action and the grounds therefor; the same procedure is required (Section 1300.205) in the case of applications by tenants for rent reduction orders. It is not disputed that such notice was given in the present case. Indeed, the notice, with its accompanying invitation to the landlord to present objections, unwittingly provided the opportunity for bringing the suit in the state court against the Rent Director. In addition, there are detailed provisions for review of the Rent Director's action (Sections 1300.209–1300.210). Applications for review may be filed with the Rent Director for forwarding to the

Regional Administrator; the Regional Administrator may affirm, revoke, or modify in whole or in part the determination of the Rent Director. From the Regional Administrator's action, the landlord may pursue his appeal by way of protest to the Price Administrator (Section 1300.215). In the alternative, a landlord may, instead of seeking review by the Regional Administrator, file a protest directly with the Price Administrator to set aside or modify an order of the Rent Director (Sections 1300.209, 1300.215). The adequacy of the procedure thus afforded is plain; at the very least, its application cannot be assailed in the abstract, at the behest of a person who has shunned it. Cf. *Anniston Manufacturing Company* v. *Davis,* 301 U. S. 337, 354–355; *Hall* v. *Geiger-Jones Company,* 242 U. S. 539, 554; *Plymouth Coal Company* v. *Pennsylvania,* 232 U. S. 531, 542, 544–545.

Since an opportunity was in fact provided to file objections to the rent reduction order both prior to its issuance and subsequent thereto, any challenge on the score of procedural due process must be addressed to the issuance of the basic maximum rent regulation itself. It cannot be contended that the statute is unconstitutional because it does not in terms require a hearing in advance of the issuance of the basic regulation. A statute is nonetheless valid where it fails to require notice, if notice is not in fact precluded by the statute. *Toombs* v. *Citizen Bank,* 281 U. S.

643; *Bratton* v. *Chandler*, 260 U. S. 110; *Kentucky Railroad Tax Cases*, 115 U. S. 321, 334. The issue is thus narrowed to the question whether due process of law requires that a hearing be afforded in fact prior to the issuance of a basic rent regulation. Such regulations operate prospectively; they establish a general rule for the conduct of many persons, not a rule of decision in a particular case. To the extent that the administrative process may partake of the quality of legislative or of judicial action, the issuance of a rent regulation belongs in the former category. Of such regulations this Court has said, speaking through Mr. Justice Holmes in *Bi-Metallic Co.* v. *Colorado*, 239 U. S. 441, 445:

> Where a rule of conduct applies to more than a few people it is impracticable that every one should have a direct voice in its adoption. The Constitution does not require all public acts to be done in town meeting or an assembly of the whole. General statutes within the state power are passed that affect the person or property of individuals, sometimes to the point of ruin, without giving them a chance to be heard. Their rights are protected in the only way that they can be in a complex society, by their power, immediate or remote, over those who make the rule.[16]

[16] To the same effect are *Highland Farms Dairy* v. *Agnew*, 16 F. Supp. 575 (E. D. Va. 1936), aff'd, 300 U. S. 608; *State ex rel. State Board of Milk Control* v. *Newark Milk Co.*, 118

It was not supposed that the presidential order reducing the gold content of the dollar, within limits fixed by Congress, was invalid because of the absence of hearings. Cf. *Norman* v. *Baltimore & Ohio Railroad Company*, 294 U. S. 240. And it has not been suggested that regulations under the Selective Service law, which prescribe occupational and medical standards applicable generally to registrants, are invalid because not preceded by hearings.

The exigencies of the Price Control Act as an essential wartime measure were regarded by Congress as precluding the holding of formal hearings before the issuance of price or rent regulations.[17]

N. J. Eq. 504, 179 Atl. 116 (1935); *Spokane Hotel Co.* v. *Younger*, 113 Wash. 359, 194 Pac. 595 (1920). Compare the following cases involving import tariff matters, where approval of tariff schedules adopted without prior hearing rests upon the twofold basis of the plenary authority of Congress to deal with the subject matter and the doctrine enunciated in the *Bi-Metallic Co.* case, *supra*: *United States* v. *Bush & Co.*, 310 U. S. 371; *Norwegian Nitrogen Products Co.* v. *United States*, 288 U. S. 294; *Buttfield* v. *Stranahan*, 192 U. S. 470. Compare also the following cases in which the omission of special findings in support of administrative action was approved on the ground of the quasi-legislative character of the proceedings: *Pacific States Box & Basket Co.* v. *White*, 296 U. S. 176; *American Telephone & Telegraph Co.* v. *United States*, 14 F. Supp. 121 (S. D. N. Y. 1936), aff'd, 299 U. S. 232.

[17] The provisions of the bill reported by the House Banking and Currency Committee were virtually identical in this respect with the provisions of the Act. See H. Rept. No. 1409, 77th Cong., 1st sess. (1941), pp. 10–12; H. R. 5990, 77th Cong. 1st sess. (1941). See also Sen. Comm. Print, Hear-

Congress did, however, provide in Sections 203 and 204 of the Act a comprehensive procedure for the adjustment and review of maximum rent regulations and orders issued under the Act. The statutory review procedure is reflected in cases which have reached this Court. *Davies Warehouse Company* v. *Brown*, 137 F. (2d) 201 (E. C. A.), pending on certiorari, No. 112, present Term; *Taylor* v. *Brown*, 137 F. (2d) 654 (E. C. A.), certiorari denied, No. 305, present Term. We shall not undertake to discuss here the adequacy of the protest and review procedure available to challenge a basic regulation. That procedure was not availed of in the present case; in any event, its operations are more fully

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ings before Sen. Committee on Banking and Currency on H. R. 5990, 77th Cong., 1st sess. (1941), pp. 72–105. The first bill passed by the House authorized the issuance of price regulations by the Administrator without prior hearing, followed by opportunity for full hearing before an administrative Board of Review while the regulations remained in effect. H. R. 5990 (in the Senate), 77th Cong., 1st sess. (1941). The Senate rejected this. A proposal by Senator Taft to require hearings prior to the issuance of price regulations but authorizing temporary regulations without prior hearings to remain in effect for not more than sixty days was never brought to a vote. See 88 Cong. Rec. 7.

See H. Rept. 1409, *supra*, pp. 9–10: "The procedure governing the preparation and issuance of substantive regulations and orders prescribing ceilings or regulating practices has necessarily been adapted to the nature of the powers granted, which involves a broad delegation of legislative power, to the fact that such regulations will apply to large numbers of persons, and to practical considerations, such as the necessity for immediate action to check rapidly rising prices and the importance of avoiding speculative disturbances of the market pending the determination of a price ceiling."

discussed in the Government's brief in the *Rottenberg* and *Yakus* cases, Nos. 374 and 375, present Term.

III

Section 265 of the Judicial Code Is Not a Bar to the Administrator's Suit

Although not passed on below, and not involving the jurisdiction of the district court in the strict sense (*Smith* v. *Apple*, 264 U. S. 274, 278–280), the question whether the present suit is affected by Section 265 of the Judicial Code is doubtless open on this appeal under the Act of August 24, 1937. Cf. *United States* v. *Rock Royal Co-op.*, 307 U. S. 533, 541, 568–571.

The same question has been raised in a number of cases in which the Administrator has brought injunction proceedings to restrain landlords from further prosecuting eviction suits in the state courts. Without exception Section 265 has been held not to be a bar. The decisions have been rendered by two circuit courts of appeals,[18] including that for the Fifth Circuit, in which the present suit arises, by a three-judge district court,[19] and by several other district courts.[20]

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[18] *Brown* v. *Wright*, 137 F. (2d) 484 (C. C. A. 4th, 1943); *Henderson* v. *Fleckinger*, 136 F. (2d) 381 (C. C. A. 5th, 1943).

[19] *Henderson* v. *Kimmel*, 47 F. Supp. 635 (D. Kan. 1942).

[20] *Brown* v. *Wilson*, W. D. Wash., Feb. 18, 1943, OPA Serv. 622: 81; *Brown* v. *Wick*, 48 F. Supp. 887 (E. D. Mich. 1943); *Brown* v. *Wood*, N. D. Cal., Mar. 18, 1943, OPA Ser. 622: 103; *Brown* v. *Lee*, S. D. Cal., March 23, 1943, OPA Service 622: 98.

These decisions are, we submit, entirely sound. The policy expressed in Section 265 must be read together with the provisions of the Emergency Price Control Act; in particular, it must be read in connection with the express power conferred on the Administrator to enforce compliance with the Act by injunction proceedings, and the provisions withdrawing from all courts (including state courts) except the Emergency Court of Appeals jurisdiction to restrain the enforcement of the Act or regulations thereunder. Thus viewed, the declaration in Section 265 is overborne by the procedural authority and jurisdictional limitations provided in the present Act.

First.—The Administrator's suit was brought to enforce compliance with the Act upon a showing of violations or threatened violations. The landlord's action in the state court was part of a plan to escape compliance with the Act; it was not merely a proceeding for an adjudication, but was a constituent part of a plan for violation of the price control law. By the same token, it cannot be said of the Administrator's suit, as it was said in *Oklahoma Packing Company* v. *Oklahoma Gas and Electric Company,* 309 U. S. 4, 8, that "the only thing sought to be accomplished by this equitable action is to stay the continuance of that [state court] action."

The landlord's plan of violation of the Act did not rest simply on the choice of an improper forum. More important, it rested on the con-

tinuance of rental charges when the rent director was about to adjust them downward, and the continuance of those charges during the pendency of a challenge to the proposed order. The statute itself commands obedience to rent or price orders during the process of administrative and judicial review. Sections 203 (a), 204 (c), 204 (d). The rent regulation itself provided for orders of adjustment in the case of property rented, as was appellee's, subsequent to April 1, 1941, the base date. Section 1388.1704 (c); 1388.1705 (c). Revised Procedural Regulation No. 3 provided that such an order would be issued only after serving notice upon the landlord stating the proposed action and the grounds therefor. Section 1300.207. These provisions the landlord has attempted to set at naught, while continuing to charge rents which, but for the state court suit, would have been formally reduced by administrative order. The obvious purpose and effect of the institution of the state court suit has been to keep excessive rentals in force during the period in which the Act and the regulations contemplated that they should have been reduced. In these circumstances the Administrator was plainly empowered by Section 205 (a) of the Act to bring the present suit to enforce compliance. Compliance requires abandonment of the state court proceedings as well as obedience to the projected adjustment order.

That Section 265 is not a bar to suits brought to enforce compliance with federal law has been

recognized in a number of decisions. *National Labor Relations Board* v. *Sunshine Mining Co.*, 125 F. (2d) 757 (C. C. A. 9th, 1942); *Western Fruit Growers* v. *United States*, 124 F. (2d) 381 (C. C. A. 9th, 1941); *Miller* v. *Climax Molybdenum Co.*, 96 F. (2d) 254 (C. C. A. 10th, 1938); *In re Securities and Exchange Commission*, 48 F. Supp. 716 (D. Del. 1943); *Katz Drug Co.* v. *W. A. Sheaffer Pen Co.*, 6 F. Supp. 212 (W. D. Mo. 1933); *Good Coal Co.* v. *National Labor Relations Board*, 6 L. R. R. 323 (C. C. A. 6th). Cf. *Sanders* v. *Oklahoma City*, 19 F. Supp. 50 (W. D. Okla., 1937), aff'd, 94 F. (2d) 323 (C. C. A. 10th, 1938). Likewise, injunctions have been granted against interference with property interests of the United States through state court proceedings. *United States* v. *Phillips*, 33 F. Supp. 261 (N. D. Okla., 1940), decree vacated on other grounds, 312 U. S. 246; *United States* v. *McIntosh*, 57 F. (2d) 573 (E. D. Va. 1932), 2 F. Supp. 244 (E. D. Va. 1932), rehearing denied, 3 F. Supp. 715 (E. D. Va. 1933), appeal dismissed, 70 F. (2d) 507 (C. C. A. 4th, 1934); *United States* v. *Babcock*, 6 F. (2d) 160 (D. Ind. 1925), reversed for modification of decree, 9 F. (2d) 905 (C. C. A. 7th, 1925). Cf. *United States* v. *Inaba*, 291 Fed. 416 (E. D. Wash. 1923).

Second.—The exclusive jurisdiction provision in Section 204 (d) of the Act, withdrawing from all courts save the Emergency Court of Appeals jurisdiction to enjoin the enforcement of the Act or regulations thereunder, furnishes additional

ground for the inapplicability of Section 265. Section 265 was designed to prevent needless friction "between two systems of courts having potential jurisdiction over the same subject-matter." *Hale* v. *Bimco Trading, Inc.*, 306 U. S. 375, 378. It declares a rule of comity between courts of "concurrent" or "coordinate" jurisdiction. *Kline* v. *Burke Construction Company*, 260 U. S. 226, 229. Here, however, Congress itself has abrogated the rule of comity, in the interest of the uniform effectiveness of a vital wartime measure. Congress itself has derogated from the ordinary independence of state courts by channeling injunctive attacks against the Price Control Act in a single federal tribunal, with review in this Court.

The present case is therefore essentially like those discussed in *Toucey* v. *New York Life Insurance Co.*, 314 U. S. 118, 132–134, in which congressional legislation has been deemed to qualify Section 265. Some of these enactments, like the Removal Acts and the statute limiting the liability of shipowners, did not in terms authorize injunctions against state court proceedings. Nevertheless, the congressional mandate withdrawing jurisdiction from the state courts upon the removal of an action or upon the transfer of a shipowner's interest for the benefit of claimants has properly been held to carry with it authority to enforce the withdrawal by federal injunctive process. *Dietzsch* v. *Huidekoper*, 103 U. S. 494; *Madisonville Traction Company* v. *Mining Com-*

pany, 196 U. S. 239; *Providence and N. Y. S. S. Company* v. *Hill Manufacturing Company,* 109 U. S. 578, 579. See also *Kalb* v. *Feuerstein,* 308 U. S. 433, under the Frazier-Lemke Act. Cf. cases cited *supra,* p. 39, under the National Labor Relations Act and the Public Utility Holding Company Act.

It is immaterial that the withdrawal of jurisdiction from the state court might have been raised as a defense in that proceeding.[21] The same circumstance is present in the removal cases (see *Metropolitan Casualty Insurance Company* v. *Stevens,* 312 U. S. 563, 567) and does not preclude resort to a federal injunction. Nor is it material that the district court is not itself the exclusive federal forum for suits to set aside regulations. The authority of the federal district court does not depend upon Section 262 of the Judicial Code, authorizing writs in aid of its own jurisdiction. Its authority rests on its general equity powers and on Section 205 (a) of the Price Control Act. So far as Section 265 is concerned, the important fact is that the aid of a federal court may be had to enforce the Congressional preemption of jurisdiction in favor of one federal court to the exclusion of state courts.

[21] Presumably the question could also be raised by habeas corpus in a federal court, upon a commitment by the state court for contempt. *Ohio* v. *Thomas,* 173 U. S. 276. That procedure would entail greater friction and conflict than does the injunction process.

CONCLUSION

For the foregoing reasons the decree below should be reversed.

Respectfully submitted.

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JANUARY 1944.

U. S. GOVERNMENT PRINTING OFFICE: 1944

[PUBLIC LAW 421—77TH CONGRESS]

[CHAPTER 26—2D SESSION]

[H. R. 5990]

AN ACT

To further the national defense and security by checking speculative and excessive price rises, price dislocations, and inflationary tendencies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—GENERAL PROVISIONS AND AUTHORITY

PURPOSES; TIME LIMIT; APPLICABILITY

SECTION 1. (a) It is hereby declared to be in the interest of the national defense and security and necessary to the effective prosecution of the present war, and the purposes of this Act are, to stabilize prices and to prevent speculative, unwarranted, and abnormal increases in prices and rents; to eliminate and prevent profiteering, hoarding, manipulation, speculation, and other disruptive practices resulting from abnormal market conditions or scarcities caused by or contributing to the national emergency; to assure that defense appropriations are not dissipated by excessive prices; to protect persons with relatively fixed and limited incomes, consumers, wage earners, investors, and persons dependent on life insurance, annuities, and pensions, from undue impairment of their standard of living; to prevent hardships to persons engaged in business, to schools, universities, and other institutions, and to the Federal, State, and local governments, which would result from abnormal increases in prices; to assist in securing adequate production of commodities and facilities; to prevent a post emergency collapse of values; to stabilize agricultural prices in the manner provided in section 3; and to permit voluntary cooperation between the Government and producers, processors, and others to accomplish the aforesaid purposes. It shall be the policy of those departments and agencies of the Government dealing with wages (including the Department of Labor and its various bureaus, the War Department, the Navy Department, the War Production Board, the National Labor Relations Board, the National Mediation Board, the National War Labor Board, and others heretofore or hereafter created), within the limits of their authority and jurisdiction, to work toward a stabilization of prices, fair and equitable wages, and cost of production.

(b) The provisions of this Act, and all regulations, orders, price schedules, and requirements thereunder, shall terminate on June 30, 1943, or upon the date of a proclamation by the President, or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this Act is not necessary in the interest of the national defense and security, whichever date is the earlier; except that as to offenses committed, or rights or liabilities incurred, prior to such termination date, the provisions of this Act and such regulations,

orders, price schedules, and requirements shall be treated as still remaining in force for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense.

(c) The provisions of this Act shall be applicable to the United States, its Territories and possessions, and the District of Columbia.

PRICES, RENTS, AND MARKET AND RENTING PRACTICES

SEC. 2. (a) Whenever in the judgment of the Price Administrator (provided for in section 201) the price or prices of a commodity or commodities have risen or threaten to rise to an extent or in a manner inconsistent with the purposes of this Act, he may by regulation or order establish such maximum price or maximum prices as in his judgment will be generally fair and equitable and will effectuate the purposes of this Act. So far as practicable, in establishing any maximum price, the Administrator shall ascertain and give due consideration to the prices prevailing between October 1 and October 15, 1941 (or if, in the case of any commodity, there are no prevailing prices between such dates, or the prevailing prices between such dates are not generally representative because of abnormal or seasonal market conditions or other cause, then to the prices prevailing during the nearest two-week period in which, in the judgment of the Administrator, the prices for such commodity are generally representative), for the commodity or commodities included under such regulation or order, and shall make adjustments for such relevant factors as he may determine and deem to be of general applicability, including the following: Speculative fluctuations, general increases or decreases in costs of production, distribution, and transportation, and general increases or decreases in profits earned by sellers of the commodity or commodities, during and subsequent to the year ended October 1, 1941. Every regulation or order issued under the foregoing provisions of this subsection shall be accompanied by a statement of the considerations involved in the issuance of such regulation or order. As used in the foregoing provisions of this subsection, the term "regulation or order" means a regulation or order of general applicability and effect. Before issuing any regulation or order under the foregoing provisions of this subsection, the Administrator shall, so far as practicable, advise and consult with representative members of the industry which will be affected by such regulation or order. In the case of any commodity for which a maximum price has been established, the Administrator shall, at the request of any substantial portion of the industry subject to such maximum price, regulation, or order of the Administrator, appoint an industry advisory committee, or committees, either national or regional or both, consisting of such number of representatives of the industry as may be necessary in order to constitute a committee truly representative of the industry, or of the industry in such region, as the case may be. The committee shall select a chairman from among its members, and shall meet at the call of the chairman. The Administrator shall from time to time, at the request of the committee, advise and consult with the committee with respect to the regulation or order, and with respect to the form thereof, and classifications, differentiations, and adjustments therein. The committee may make such recommendations to

the Administrator as it deems advisable. Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, without regard to the foregoing provisions of this subsection, issue temporary regulations or orders establishing as a maximum price or maximum prices the price or prices prevailing with respect to any commodity or commodities within five days prior to the date of issuance of such temporary regulations or orders; but any such temporary regulation or order shall be effective for not more than sixty days, and may be replaced by a regulation or order issued under the foregoing provisions of this subsection.

(b) Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he shall issue a declaration setting forth the necessity for, and recommendations with reference to, the stabilization or reduction of rents for any defense-area housing accommodations within a particular defense-rental area. If within sixty days after the issuance of any such recommendations rents for any such accommodations within such defense-rental area have not in the judgment of the Administrator been stabilized or reduced by State or local regulation, or otherwise, in accordance with the recommendations, the Administrator may by regulation or order establish such maximum rent or maximum rents for such accommodations as in his judgment will be generally fair and equitable and will effectuate the purposes of this Act. So far as practicable, in establishing any maximum rent for any defense-area housing accommodations, the Administrator shall ascertain and give due consideration to the rents prevailing for such accommodations, or comparable accommodations, on or about April 1, 1941 (or if, prior or subsequent to April 1, 1941, defense activities shall have resulted or threatened to result in increases in rents for housing accommodations in such area inconsistent with the purposes of this Act, then on or about a date (not earlier than April 1, 1940), which in the judgment of the Administrator, does not reflect such increases), and he shall make adjustments for such relevant factors as he may determine and deem to be of general applicability in respect of such accommodations, including increases or decreases in property taxes and other costs. In designating defense-rental areas, in prescribing regulations and orders establishing maximum rents for such accommodations, and in selecting persons to administer such regulations and orders, the Administrator shall, to such extent as he determines to be practicable, consider any recommendations which may be made by State and local officials concerned with housing or rental conditions in any defense-rental area.

(c) Any regulation or order under this section may be established in such form and manner, may contain such classifications and differentiations, and may provide for such adjustments and reasonable exceptions, as in the judgment of the Administrator are necessary or proper in order to effectuate the purposes of this Act. Any regulation or order under this section which establishes a maximum price or maximum rent may provide for a maximum price or maximum rent below the price or prices prevailing for the commodity or commodities, or below the rent or rents prevailing for the defense-area housing accommodations, at the time of the issuance of such regulation or order.

(d) Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit speculative or manipulative practices (including practices relating to changes in form or quality) or hoarding, in connection with any commodity, and speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense-area housing accommodations, which in his judgment are equivalent to or are likely to result in price or rent increases, as the case may be, inconsistent with the purposes of this Act.

(e) Whenever the Administrator determines that the maximum necessary production of any commodity is not being obtained or may not be obtained during the ensuing year, he may, on behalf of the United States, without regard to the provisions of law requiring competitive bidding, buy or sell at public or private sale, or store or use, such commodity in such quantities and in such manner and upon such terms and conditions as he determines to be necessary to obtain the maximum necessary production thereof or otherwise to supply the demand therefor, or make subsidy payments to domestic producers of such commodity in such amounts and in such manner and upon such terms and conditions as he determines to be necessary to obtain the maximum necessary production thereof: *Provided*, That in the case of any commodity which has heretofore or may hereafter be defined as a strategic or critical material by the President pursuant to section 5d of the Reconstruction Finance Corporation Act, as amended, such determinations shall be made by the Federal Loan Administrator, with the approval of the President, and, notwithstanding any other provision of this Act or of any existing law, such commodity may be bought or sold, or stored or used, and such subsidy payments to domestic producers thereof may be paid, only by corporations created or organized pursuant to such section 5d; except that in the case of the sale of any commodity by any such corporation, the sale price therefor shall not exceed any maximum price established pursuant to subsection (a) of this section which is applicable to such commodity at the time of sale or delivery, but such sale price may be below such maximum price or below the purchase price of such commodity, and the Administrator may make recommendations with respect to the buying or selling, or storage or use, of any such commodity. In any case in which a commodity is domestically produced, the powers granted to the Administrator by this subsection shall be exercised with respect to importations of such commodity only to the extent that, in the judgment of the Administrator, the domestic production of the commodity is not sufficient to satisfy the demand therefor. Nothing in this section shall be construed to modify, suspend, amend, or supersede any provision of the Tariff Act of 1930, as amended, and nothing in this section, or in any existing law, shall be construed to authorize any sale or other disposition of any agricultural commodity contrary to the provisions of the Agricultural Adjustment Act of 1938, as amended, or to authorize the Administrator to prohibit trading in any agricultural commodity for future delivery if such trading is subject to the provisions of the Commodity Exchange Act, as amended.

(f) No power conferred by this section shall be construed to authorize any action contrary to the provisions and purposes of section 3, and no agricultural commodity shall be sold within the United States pursuant to the provisions of this section by any governmental agency at a price below the price limitations imposed by section 3 (a) of this Act with respect to such commodity.

(g) Regulations, orders, and requirements under this Act may contain such provisions as the Administrator deems necessary to prevent the circumvention or evasion thereof.

(h) The powers granted in this section shall not be used or made to operate to compel changes in the business practices, cost practices or methods, or means or aids to distribution, established in any industry, except to prevent circumvention or evasion of any regulation, order, price schedule, or requirement under this Act.

(i) No maximum price shall be established for any fishery commodity below the average price of such commodity in the year 1941.

AGRICULTURAL COMMODITIES

SEC. 3. (a) No maximum price shall be established or maintained for any agricultural commodity below the highest of any of the following prices, as determined and published by the Secretary of Agriculture: (1) 110 per centum of the parity price for such commodity, adjusted by the Secretary of Agriculture for grade, location, and seasonal differentials, or, in case a comparable price has been determined for such commodity under subsection (b), 110 per centum of such comparable price, adjusted in the same manner, in lieu of 110 per centum of the parity price so adjusted; (2) the market price prevailing for such commodity on October 1, 1941; (3) the market price prevailing for such commodity on December 15, 1941; or (4) the average price for such commodity during the period July 1, 1919, to June 30, 1929.

(b) For the purposes of this Act, parity prices shall be determined and published by the Secretary of Agriculture as authorized by law. In the case of any agricultural commodity other than the basic crops corn, wheat, cotton, rice, tobacco, and peanuts, the Secretary shall determine and publish a comparable price whenever he finds, after investigation and public hearing, that the production and consumption of such commodity has so changed in extent or character since the base period as to result in a price out of line with parity prices for basic commodities.

(c) No maximum price shall be established or maintained for any commodity processed or manufactured in whole or substantial part from any agricultural commodity below a price which will reflect to producers of such agricultural commodity a price for such agricultural commodity equal to the highest price therefor specified in subsection (a).

(d) Nothing contained in this Act shall be construed to modify, repeal, supersede, or affect the provisions of the Agricultural Marketing Agreement Act of 1937, as amended, or to invalidate any marketing agreement, license, or order, or any provision thereof or amendment thereto, heretofore or hereafter made or issued under the provisions of such Act.

(e) Notwithstanding any other provision of this or any other law, no action shall be taken under this Act by the Administrator or any other person with respect to any agricultural commodity without the prior approval of the Secretary of Agriculture; except that the Administrator may take such action as may be necessary under section 202 and section 205 (a) and (b) to enforce compliance with any regulation, order, price schedule or other requirement with respect to an agricultural commodity which has been previously approved by the Secretary of Agriculture.

(f) No provision of this Act or of any existing law shall be construed to authorize any action contrary to the provisions and purposes of this section.

PROHIBITIONS

SEC. 4. (a) It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

(b) It shall be unlawful for any person to remove or attempt to remove from any defense-area housing accommodations the tenant or occupant thereof or to refuse to renew the lease or agreement for the use of such accommodations, because such tenant or occupant has taken, or proposes to take, action authorized or required by this Act or any regulation, order, or requirement thereunder.

(c) It shall be unlawful for any officer or employee of the Government, or for any adviser or consultant to the Administrator in his official capacity, to disclose, otherwise than in the course of official duty, any information obtained under this Act, or to use any such information, for personal benefit.

(d) Nothing in this Act shall be construed to require any person to sell any commodity or to offer any accommodations for rent.

VOLUNTARY AGREEMENTS

SEC. 5. In carrying out the provisions of this Act, the Administrator is authorized to confer with producers, processors, manufacturers, retailers, wholesalers, and other groups having to do with commodities, and with representatives and associations thereof, to cooperate with any agency or person, and to enter into voluntary arrangements or agreements with any such persons, groups, or associations relating to the fixing of maximum prices, the issuance of other regulations or orders, or the other purposes of this Act, but no such arrangement or agreement shall modify any regulation, order, or price schedule previously issued which is effective in accordance with the provisions of section 2 or section 206. The Attorney General shall be promptly furnished with a copy of each such arrangement or agreement.

TITLE II—ADMINISTRATION AND ENFORCEMENT

ADMINISTRATION

SEC. 201. (a) There is hereby created an Office of Price Administration, which shall be under the direction of a Price Administrator (referred to in this Act as the "Administrator"). The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of $12,000 per annum. The Administrator may, subject to the civil-service laws, appoint such employees as he deems necessary in order to carry out his functions and duties under this Act, and shall fix their compensation in accordance with the Classification Act of 1923, as amended. The Administrator may utilize the services of Federal, State, and local agencies and may utilize and establish such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may appear for and represent the Administrator in any case in any court. In the appointment, selection, classification, and promotion of officers and employees of the Office of Price Administration, no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency.

(b) The principal office of the Administrator shall be in the District of Columbia, but he or any duly authorized representative may exercise any or all of his powers in any place. The President is authorized to transfer any of the powers and functions conferred by this Act upon the Office of Price Administration with respect to a particular commodity or commodities to any other department or agency of the Government having other functions relating to such commodity or commodities, and to transfer to the Office of Price Administration any of the powers and functions relating to priorities or rationing conferred by law upon any other department or agency of the Government with respect to any particular commodity or commodities; but, notwithstanding any provision of this or any other law, no powers or functions conferred by law upon the Secretary of Agriculture shall be transferred to the Office of Price Administration or to the Administrator, and no powers or functions conferred by law upon any other department or agency of the Government with respect to any agricultural commodity, except powers and functions relating to priorities or rationing, shall be so transferred.

(c) The Administrator shall have authority to make such expenditures (including expenditures for personal services and rent at the seat of government and elsewhere; for lawbooks and books of reference; and for paper, printing, and binding) as he may deem necessary for the administration and enforcement of this Act. The provisions of section 3709 of the Revised Statutes shall not apply to the purchase of supplies and services by the Administrator where the aggregate amount involved does not exceed $250.

(d) The Administrator may, from time to time, issue such regulations and orders as he may deem necessary or proper in order to carry out the purposes and provisions of this Act.

INVESTIGATIONS; RECORDS; REPORTS

SEC. 202. (a) The Administrator is authorized to make such studies and investigations and to obtain such information as he deems necessary or proper to assist him in prescribing any regulation or order under this Act, or in the administration and enforcement of this Act and regulations, orders, and price schedules thereunder.

(b) The Administrator is further authorized, by regulation or order, to require any person who is engaged in the business of dealing with any commodity, or who rents or offers for rent or acts as broker or agent for the rental of any housing accommodations, to furnish any such information under oath or affirmation or otherwise, to make and keep records and other documents, and to make reports, and he may require any such person to permit the inspection and copying of records and other documents, the inspection of inventories, and the inspection of defense-area housing accommodations. The Administrator may administer oaths and affirmations and may, whenever necessary, by subpena require any such person to appear and testify or to appear and produce documents, or both, at any designated place.

(c) For the purpose of obtaining any information under subsection (a), the Administrator may by subpena require any other person to appear and testify or to appear and produce documents, or both, at any designated place.

(d) The production of a person's documents at any place other than his place of business shall not be required under this section in any case in which, prior to the return date specified in the subpena issued with respect thereto, such person either has furnished the Administrator with a copy of such documents (certified by such person under oath to be a true and correct copy), or has entered into a stipulation with the Administrator as to the information contained in such documents.

(e) In case of contumacy by, or refusal to obey a subpena served upon, any person referred to in subsection (c), the district court for any district in which such person is found or resides or transacts business, upon application by the Administrator, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, or both; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The provisions of this subsection shall also apply to any person referred to in subsection (b), and shall be in addition to the provisions of section 4 (a).

(f) Witnesses subpenaed under this section shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States.

(g) No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893 (U. S. C., 1934 edition, title 49, sec. 46), shall apply with respect to any individual who specifically claims such privilege.

(h) The Administrator shall not publish or disclose any information obtained under this Act that such Administrator deems confi-

dential or with reference to which a request for confidential treatment is made by the person furnishing such information, unless he determines that the withholding thereof is contrary to the interest of the national defense and security.

PROCEDURE

SEC. 203. (a) Within a period of sixty days after the issuance of any regulation or order under section 2, or in the case of a price schedule, within a period of sixty days after the effective date thereof specified in section 206, any person subject to any provision of such regulation, order, or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision and affidavits or other written evidence in support of such objections. At any time after the expiration of such sixty days any persons subject to any provision of such regulation, order, or price schedule may file such a protest based solely on grounds arising after the expiration of such sixty days. Statements in support of any such regulation, order, or price schedule may be received and incorporated in the transcript of the proceedings at such times and in accordance with such regulations as may be prescribed by the Administrator. Within a reasonable time after the filing of any protest under this subsection, but in no event more than thirty days after such filing or ninety days after the issuance of the regulation or order (or in the case of a price schedule, ninety days after the effective date thereof specified in section 206) in respect of which the protest is filed, whichever occurs later, the Administrator shall either grant or deny such protest in whole or in part, notice such protest for hearing, or provide an opportunity to present further evidence in connection therewith. In the event that the Administrator denies any such protest in whole or in part, he shall inform the protestant of the grounds upon which such decision is based, and of any economic data and other facts of which the Administrator has taken official notice.

(b) In the administration of this Act the Administrator may take official notice of economic data and other facts, including facts found by him as a result of action taken under section 202.

(c) Any proceedings under this section may be limited by the Administrator to the filing of affidavits, or other written evidence, and the filing of briefs.

REVIEW

SEC. 204. (a) Any person who is aggrieved by the denial or partial denial of his protest may, within thirty days after such denial, file a complaint with the Emergency Court of Appeals, created pursuant to subsection (c), specifying his objections and praying that the regulation, order, or price schedule protested be enjoined or set aside in whole or in part. A copy of such complaint shall forthwith be served on the Administrator, who shall certify and file with such court a transcript of such portions of the proceedings in connection with the protest as are material under the complaint. Such transcript shall include a statement setting forth, so far as practicable, the economic data and other facts of which the Administrator has taken official notice. Upon the filing of such complaint the court shall have

exclusive jurisdiction to set aside such regulation, order, or price schedule, in whole or in part, to dismiss the complaint, or to remand the proceeding: *Provided*, That the regulation, order, or price schedule may be modified or rescinded by the Administrator at any time notwithstanding the pendency of such complaint. No objection to such regulation, order, or price schedule, and no evidence in support of any objection thereto, shall be considered by the court, unless such objection shall have been set forth by the complainant in the protest or such evidence shall be contained in the transcript. If application is made to the court by either party for leave to introduce additional evidence which was either offered to the Administrator and not admitted, or which could not reasonably have been offered to the Administrator or included by the Administrator in such proceedings, and the court determines that such evidence should be admitted, the court shall order the evidence to be presented to the Administrator. The Administrator shall promptly receive the same, and such other evidence as he deems necessary or proper, and thereupon he shall certify and file with the court a transcript thereof and any modification made in the regulation, order, or price schedule as a result thereof; except that on request by the Administrator, any such evidence shall be presented directly to the court.

(b) No such regulation, order, or price schedule shall be enjoined or set aside, in whole or in part, unless the complainant establishes to the satisfaction of the court that the regulation, order, or price schedule is not in accordance with law, or is arbitrary or capricious. The effectiveness of a judgment of the court enjoining or setting aside, in whole or in part, any such regulation, order, or price schedule shall be postponed until the expiration of thirty days from the entry thereof, except that if a petition for a writ of certiorari is filed with the Supreme Court under subsection (d) within such thirty days, the effectiveness of such judgment shall be postponed until an order of the Supreme Court denying such petition becomes final, or until other final disposition of the case by the Supreme Court.

(c) There is hereby created a court of the United States to be known as the Emergency Court of Appeals, which shall consist of three or more judges to be designated by the Chief Justice of the United States from judges of the United States district courts and circuit courts of appeals. The Chief Justice of the United States shall designate one of such judges as chief judge of the Emergency Court of Appeals, and may, from time to time, designate additional judges for such court and revoke previous designations. The chief judge may, from time to time, divide the court into divisions of three or more members, and any such division may render judgment as the judgment of the court. The court shall have the powers of a district court with respect to the jurisdiction conferred on it by this Act; except that the court shall not have power to issue any temporary restraining order or interlocutory decree staying or restraining, in whole or in part, the effectiveness of any regulation or order issued under section 2 or any price schedule effective in accordance with the provisions of section 206. The court shall exercise its powers and prescribe rules governing its procedure in such manner as to expedite the determination of cases of which it has jurisdiction under this Act. The court may fix and establish a table of costs and

fees to be approved by the Supreme Court of the United States, but the costs and fees so fixed shall not exceed with respect to any item the costs and fees charged in the Supreme Court of the United States. The court shall have a seal, hold sessions at such places as it may specify, and appoint a clerk and such other employees as it deems necessary or proper.

(d) Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a circuit court of appeals as provided in section 240 of the Judicial Code, as amended (U. S. C., 1934 edition, title 28, sec. 347). The Supreme Court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this subsection. The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, of any price schedule effective in accordance with the provisions of section 206, and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule, or to restrain or enjoin the enforcement of any such provision.

ENFORCEMENT

SEC. 205. (a) Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

(b) Any person who willfully violates any provision of section 4 of this Act, and any person who makes any statement or entry false in any material respect in any document or report required to be kept or filed under section 2 or section 202, shall, upon conviction thereof, be subject to a fine of not more than $5,000, or to imprisonment for not more than two years in the case of a violation of section 4 (c) and for not more than one year in all other cases, or to both such fine and imprisonment. Whenever the Administrator has reason to believe that any person is liable to punishment under this subsection, he may certify the facts to the Attorney General, who may, in his discretion, cause appropriate proceedings to be brought.

(c) The district courts shall have jurisdiction of criminal proceedings for violations of section 4 of this Act, and, concurrently with

State and Territorial courts, of all other proceedings under section 205 of this Act. Such criminal proceedings may be brought in any district in which any part of any act or transaction constituting the violation occurred. Except as provided in section 205 (f) (2), such other proceedings may be brought in any district in which any part of any act or transaction constituting the violation occurred, and may also be brought in the district in which the defendant resides or transacts business, and process in such cases may be served in any district wherein the defendant resides or transacts business or wherever the defendant may be found. Any such court shall advance on the docket and expedite the disposition of any criminal or other proceedings brought before it under this section. No costs shall be assessed against the Administrator or the United States Government in any proceeding under this Act.

(d) No person shall be held liable for damages or penalties in any Federal, State, or Territorial court, on any grounds for or in respect of anything done or omitted to be done in good faith pursuant to any provision of this Act or any regulation, order, price schedule, requirement, or agreement thereunder, or under any price schedule of the Administrator of the Office of Price Administration or of the Administrator of the Office of Price Administration and Civilian Supply, notwithstanding that subsequently such provision, regulation, order, price schedule, requirement, or agreement may be modified, rescinded, or determined to be invalid. In any suit or action wherein a party relies for ground of relief or defense upon this Act or any regulation, order, price schedule, requirement, or agreement thereunder, the court having jurisdiction of such suit or action shall certify such fact to the Administrator. The Administrator may intervene in any such suit or action.

(e) If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may bring an action either for $50 or for treble the amount by which the consideration exceeded the applicable maximum price, whichever is the greater, plus reasonable attorney's fees and costs as determined by the court. For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be. If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer is not entitled to bring suit or action under this subsection, the Administrator may bring such action under this subsection on behalf of the United States. Any suit or action under this subsection may be brought in any court of competent jurisdiction, and shall be instituted within one year after delivery is completed or rent is paid. The provisions of this subsection shall not take effect until after the expiration of six months from the date of enactment of this Act.

(f) (1) Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act and to assure compliance with and provide for the effective enforcement of any regulation or order issued or which may be issued under section 2, or of any price schedule effective in accordance with

the provisions of section 206, he may by regulation or order issue to or require of any person or persons subject to any regulation or order issued under section 2, or subject to any such price schedule, a license as a condition of selling any commodity or commodities with respect to which such regulation, order, or price schedule is applicable. It shall not be necessary for the Administrator to issue a separate license for each commodity or for each regulation, order, or price schedule with respect to which a license is required. No such license shall contain any provision which could not be prescribed by regulation, order, or requirement under section 2 or section 202: *Provided*, That no such license may be required as a condition of selling or distributing (except as waste or scrap) newspapers, periodicals, books, or other printed or written material, or motion pictures, or as a condition of selling radio time: *Provided further*, That no license may be required of any farmer as a condition of selling any agricultural commodity produced by him, and no license may be required of any fisherman as a condition of selling any fishery commodity caught or taken by him: *Provided further*, That in any case in which such a license is required of any person, the Administrator shall not have power to deny to such person a license to sell any commodity or commodities, unless such person already has such a license to sell such commodity or commodities, or unless there is in effect under paragraph (2) of this subsection with respect to such person an order of suspension of a previous license to the extent that such previous license authorized such person to sell such commodity or commodities.

(2) Whenever in the judgment of the Administrator a person has violated any of the provisions of a license issued under this subsection, or has violated any of the provisions of any regulation, order, or requirement under section 2 or section 202 (b), or any of the provisions of any price schedule effective in accordance with the provisions of section 206, which is applicable to such person, a warning notice shall be sent by registered mail to such person. If the Administrator has reason to believe that such person has again violated any of the provisions of such license, regulation, order, price schedule, or requirement after receipt of such warning notice, the Administrator may petition any State or Territorial court of competent jurisdiction, or a district court subject to the limitations hereinafter provided, for an order suspending the license of such person for any period of not more than twelve months. If any such court finds that such person has violated any of the provisions of such license, regulation, order, price schedule, or requirement after the receipt of the warning notice, such court shall issue an order suspending the license to the extent that it authorizes such person to sell the commodity or commodities in connection with which the violation occurred, or to the extent that it authorizes such person to sell any commodity or commodities with respect to which a regulation or order issued under section 2, or a price schedule effective in accordance with the provisions of section 206, is applicable; but no such suspension shall be for a period of more than twelve months. For the purposes of this subsection, any such proceedings for the suspension of a license may be brought in a district court if the licensee is doing business in more than one State, or if his gross sales exceed $100,000 per annum. Within thirty days after the entry of the judgment or order of any

court either suspending a license, or dismissing or denying in whole or in part the Administrator's petition for suspension, an appeal may be taken from such judgment or order in like manner as an appeal may be taken in other cases from a judgment or order of a State, Territorial, or district court, as the case may be. Upon good cause shown, any such order of suspension may be stayed by the appropriate court or any judge thereof in accordance with the applicable practice; and upon written stipulation of the parties to the proceeding for suspension, approved by the trial court, any such order of suspension may be modified, and the license which has been suspended may be restored, upon such terms and conditions as such court shall find reasonable. Any such order of suspension shall be affirmed by the appropriate appellate court if, under the applicable rules of law, the evidence in the record supports a finding that there has been a violation of any provision of such license, regulation, order, price schedule, or requirement after receipt of such warning notice. No proceedings for suspension of a license, and no such suspension, shall confer any immunity from any other provision of this Act.

SAVING PROVISIONS

SEC. 206. Any price schedule establishing a maximum price or maximum prices, issued by the Administrator of the Office of Price Administration or the Administrator of the Office of Price Administration and Civilian Supply, prior to the date upon which the Administrator provided for by section 201 of this Act takes office, shall, from such date, have the same effect as if issued under section 2 of this Act until such price schedule is superseded by action taken pursuant to such section 2. Such price schedules shall be consistent with the standards contained in section 2 and the limitations contained in section 3 of this Act, and shall be subject to protest and review as provided in section 203 and section 204 of this Act. All such price schedules shall be reprinted in the Federal Register within ten days after the date upon which such Administrator takes office.

TITLE III—MISCELLANEOUS

QUARTERLY REPORT

SEC. 301. The Administrator from time to time, but not less frequently than once every ninety days, shall transmit to the Congress a report of operations under this Act. If the Senate or the House of Representatives is not in session, such reports shall be transmitted to the Secretary of the Senate, or the Clerk of the House of Representatives, as the case may be.

DEFINITIONS

SEC. 302. As used in this Act—

(a) The term "sale" includes sales, dispositions, exchanges, leases, and other transfers, and contracts and offers to do any of the foregoing. The terms "sell", "selling", "seller", "buy", and "buyer", shall be construed accordingly.

(b) The term "price" means the consideration demanded or received in connection with the sale of a commodity.

(c) The term "commodity" means commodities, articles, products, and materials (except materials furnished for publication by any press association or feature service, books, magazines, motion pictures, periodicals and newspapers, other than as waste or scrap); and it also includes services rendered otherwise than as an employee in connection with the processing, distribution, storage, installation, repair, or negotiation of purchases or sales of a commodity, or in connection with the operation of any service establishment for the servicing of a commodity: *Provided*, That nothing in this Act shall be construed to authorize the regulation of (1) compensation paid by an employer to any of his employees, or (2) rates charged by any common carrier or other public utility, or (3) rates charged by any person engaged in the business of selling or underwriting insurance, or (4) rates charged by any person engaged in the business of operating or publishing a newspaper, periodical, or magazine, or operating a radio-broadcasting station, a motion-picture or other theater enterprise, or outdoor advertising facilities, or (5) rates charged for any professional services.

(d) The term "defense-rental area" means the District of Columbia and any area designated by the Administrator as an area where defense activities have resulted or threaten to result in an increase in the rents for housing accommodations inconsistent with the purposes of this Act.

(e) The term "defense-area housing accommodations" means housing accommodations within any defense-rental area.

(f) The term "housing accommodations" means any building, structure, or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes (including houses, apartments, hotels, rooming or boarding house accommodations, and other properties used for living or dwelling purposes) together with all privileges, services, furnishings, furniture, and facilities connected with the use or occupancy of such property.

(g) The term "rent" means the consideration demanded or received in connection with the use or occupancy or the transfer of a lease of any housing accommodations.

(h) The term "person" includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative of any of the foregoing, and includes the United States or any agency thereof, or any other government, or any of its political subdivisions, or any agency of any of the foregoing: *Provided*, That no punishment provided by this Act shall apply to the United States, or to any such government, political subdivision, or agency.

(i) The term "maximum price", as applied to prices of commodities means the maximum lawful price for such commodities, and the term "maximum rent" means the maximum lawful rent for the use of defense-area housing accommodations. Maximum prices and maximum rents may be formulated, as the case may be, in terms of prices, rents, margins, commissions, fees, and other charges, and allowances.

(j) The term "documents" includes records, books, accounts, correspondence, memoranda, and other documents, and drafts and copies of any of the foregoing.

(k) The term "district court" means any district court of the United States, and the United States Court for any Territory or other place subject to the jurisdiction of the United States; and the term "circuit courts of appeals" includes the United States Court of Appeals for the District of Columbia.

SEPARABILITY

SEC. 303. If any provision of this Act or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of the Act and the applicability of such provision to other persons or circumstances shall not be affected thereby.

APPROPRIATIONS AUTHORIZED

SEC. 304. There are authorized to be appropriated such sums as may be necessary or proper to carry out the provisions and purposes of this Act.

APPLICATION OF EXISTING LAW

SEC. 305. No provision of law in force on the date of enactment of this Act shall be construed to authorize any action inconsistent with the provisions and purposes of this Act.

SHORT TITLE

SEC. 306. This Act may be cited as the "Emergency Price Control Act of 1942".

Approved, January 30, 1942.

OFFICE OF PRICE ADMINISTRATION
WASHINGTON, D. C.

TYPICAL MAXIMUM RENT REGULATION FOR HOUSING ACCOMMODATIONS OTHER THAN HOTELS AND ROOMING HOUSES

[NOTE.—*The following is a typical Maximum Rent Regulation for housing accommodations other than hotels and rooming houses. The provisions of Supplementary Amendments 1 to 17, inclusive, and other amendments to Maximum Rent Regulations for Housing Accommodations Other Than Hotels and Rooming Houses, issued and effective prior to April 12, 1943, are included in this typical Regulation.*

Maximum Rent Regulations have been issued with five different maximum rent dates: January 1, 1941, April 1, 1941, July 1, 1941, October 1, 1941, and March 1, 1942. Maximum Rent Regulations have been issued with nine different effective dates: June 1, 1942, July 1, 1942, August 1, 1942, September 1, 1942, October 1, 1942, November 1, 1942, December 1, 1942, December 12, 1942, and January 1, 1943. In order to make the following typical Maximum Rent Regulation applicable to a particular defense-rental area, it is necessary to determine the maximum rent date and the effective date of the Maximum Rent Regulation for that particular defense-rental area. This determination can be made by consulting the Area Rent Office for the particular defense-rental area.]

SECTION 1. *Scope of regulation.*—(a) This Maximum Rent Regulation applies to all housing accommodations within the [insert name of the area] Defense-Rental Area, as designated in the Designation and Rent Declaration issued by the Administrator on [insert date of issuance of Designation and Rent Declaration], except as provided in paragraph (b) of this section.

(b) This Maximum Rent Regulation does not apply to the following:

(1) Housing accommodations situated on a farm and occupied by a tenant who is engaged for a substantial portion of his time in farming operations thereon;

(2) Dwelling space occupied by domestic servants, caretakers, managers, or other employees to whom the space is provided as part of their compensation and who are employed for the purpose of rendering services in connection with the premises of which the dwelling space is a part;

(3) Rooms or other housing accommodations within hotels or rooming houses, or housing accommodations which have been, with the consent of the Administrator, brought under the control of the Maximum Rent Regulation for Hotels and Rooming Houses pursuant to the provisions of that regulation.

(4) Entire structures or premises wherein more than 25 rooms are rented or offered for rent by any lessee, sublessee or other tenant of such entire structure or premises: *Provided*, That this Maximum Rent Regulation does apply to entire structures or premises wherein 25 or less rooms are rented or offered for rent by any lessee, sublessee or other tenant of such entire structure or premises, whether or not used by the lessee, sublessee or other tenant as a hotel or rooming house: *And provided further*, That this Maximum Rent Regulation does apply to an underlying lease of any entire structure or premises which was entered into after [insert maximum rent date] and prior to the effective date of this Maximum Rent Regulation, while such lease remains in force with no power in the tenant to cancel or otherwise terminate the lease.

(5) Housing accommodations rented to the United States acting by the National Housing Agency: *Provided, however*, That this Maximum Rent Regulation does apply to a sublease or other subrenting of such accommodations or any part thereof.

(c) The provisions of any lease or other rental agreement shall remain in force pursuant to the terms thereof, except insofar as those provisions are inconsistent with this Maximum Rent Regulation.

(d) An agreement by the tenant to waive the benefit of any provision of this Maximum Rent Regulation is void. A tenant shall not be entitled by reason of this Maximum Rent Regulation to refuse to pay or to recover any portion of any rents due or paid for use or occupancy prior to the effective date of this Maximum Rent Regulation.[1]

SECTION 2. *Prohibition against higher than maximum rents.*—(a) Regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, no person shall demand or receive any rent for use or occupancy on and after the effective date of this Maximum Rent Regulation of any housing accommodations within the Defense-Rental Area higher than the maximum rents provided by this Maximum Rent Regulation; and no person shall offer, solicit, attempt, or agree to do any of the foregoing. Lower rents than those provided by this Maximum Rent Regulation may be demanded or received.

(b) Notwithstanding any other provision of this Maximum Rent Regulation, where housing accommodations are heated with fuel oil the landlord of such accommodations may as hereinafter provided enter into an agreement with the tenant providing for payment by the tenant of part or all of the cost of changing the heating unit to use some fuel other than oil or of installing a new heating unit using some fuel other than oil. Prior to making such agreement the landlord shall in writing report the terms of the proposed agreement to the Area Rent Office. The landlord may enter into the agreement either upon its approval by the Administrator or, unless the Administrator has disapproved the proposed agreement within five days after the filing of such report, upon the expiration of such 5-day period.

(c) Where a lease of housing accommodations was entered into

[1] In Maximum Rent Regulation No. 51 (Fort Worth, Tex.), insert "November 1, 1942" instead of the words "the effective date of this Maximum Rent Regulation." In other parts of Maximum Rent Regulation No. 51 insert "the effective date of this section" for the words "the effective date of this Maximum Rent Regulation." Sections 1, 6, and 13 of Maximum Rent Regulation No. 51 were effective October 15, 1942, and the remaining sections of Maximum Rent Regulation No. 51 were effective November 1, 1942.

prior to the effective date of this Maximum Rent Regulation[2] and the tenant as a part of such lease or in connection therewith was granted an option to buy the housing accommodations which were the subject of the lease, with the further provision that some or all of the payments made under the lease should be credited toward the purchase price in the event such option is exercised, the landlord, notwithstanding any other provision of this Maximum Rent Regulation, may be authorized to receive payments made by the tenant in accordance with the provisions of such lease and in excess of the maximum rent for such housing accommodations. Such authority may be secured only by a written request of the tenant to the Area Rent Office and shall be granted by order of the Administrator if he finds that such payments in excess of the maximum rent will not be inconsistent with the purposes of the Act or this Maximum Rent Regulation and would not be likely to result in the circumvention or evasion thereof. After entry of such order the landlord shall be authorized to demand, receive and retain payments provided by the lease in excess of the maximum rent for periods commencing on or after the effective date of this Maximum Rent Regulation. After entry of such order, the provisions of the lease may be enforced in accordance with law, notwithstanding any other provision of this Maximum Rent Regulation: *Provided, however*, That if at the termination of the lease the tenant shall not exercise the option to buy, the landlord may thereafter remove or evict the tenant only in accordance with the provisions of Section 6 of this Maximum Rent Regulation. Nothing in this paragraph shall be construed to authorize the landlord to demand or receive payments in excess of the maximum rent in the absence of an order of the Administrator as herein provided. Where a lease of housing accommodations has been entered into on or after the effective date of this Maximum Rent Regulation,[2] and the tenant as a part of such lease or in connection therewith has been granted an option to buy the housing accommodations which are the subject of the lease, the landlord, prior to the exercise by the tenant of the option to buy, shall not demand or receive payments in excess of the maximum rent, whether or not such lease allocates some portion or portions of the periodic payments therein provided as payments on or for the option to buy.

SECTION 3. *Minimum services, furniture, furnishings and equipment.*—Except as set forth in Section 5 (b), every landlord shall, as a minimum, provide with housing accommodations the same essential services, furniture, furnishings, and equipment as those provided on the date determining the maximum rent, and as to other services, furniture, furnishings, and equipment not substantially less than those provided on such date: *Provided, however*, That where fuel oil is used to supply heat or hot water for housing accommodations, and the landlord provided heat or hot water on the date determining the maximum rent, the heat and hot water which the landlord is required to supply shall not be in excess of the amount which he can supply under any statute, regulation or order of the United States or any agency thereof which rations or limits the use of fuel oil.

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[2] In Maximum Rent Regulations with an effective date of October 1, 1942, or earlier, insert "October 20, 1942," instead of the words "the effective date of this Maximum Rent Regulation," except that for Maximum Rent Regulation No. 51 insert "November 1, 1942."

SECTION 4. *Maximum rents.*—Maximum rents (unless and until changed by the Administrator as provided in Section 5) shall be:

(a) For housing accommodations rented on [insert maximum rent date], the rent for such accommodations on that date.

(b) For housing accommodations not rented on [insert maximum rent date], but rented at any time during the two months ending on that date, the last rent for such accommodations during that two-month period.

(c) For housing accommodations not rented on [insert maximum rent date] nor during the two months ending on that date, but rented prior to the effective date of this Maximum Rent Regulation, the first rent for such accommodations after [insert maximum rent date]. The Administrator may order a decrease in the maximum rent as provided in Section 5 (c).

(d) For (1) newly constructed housing accommodations without priority rating first rented after [insert maximum rent date] and before the effective date of this Maximum Rent Regulation, or (2) housing accommodations changed between those dates so as to result in an increase or decrease of the number of dwelling units in such housing accommodations, or (3) housing accommodations changed between those dates from unfurnished to fully furnished, or from fully furnished to unfurnished, or (4) housing accommodations substantially changed between those dates by a major capital improvement as distinguished from ordinary repair, replacement and maintenance, the first rent for such accommodations after such construction or change: *Provided, however,* That, where such first rent was fixed by a lease which was in force at the time of a major capital improvement, the maximum rent shall be the first rent after termination of such lease. The Administrator may order a decrease in the maximum rent as provided in Section 5 (c).

(e) For (1) newly constructed housing accommodations without priority rating first rented on or after the effective date of this Maximum Rent Regulation, or (2) housing accommodations changed on or after such effective date so as to result in an increase or decrease of the number of dwelling units in such housing accommodations, or (3) housing accommodations not rented at any time between [insert date 2 months before maximum rent date] and such effective date, the first rent for such accommodations after the change or the effective date, as the case may be.[3] Within 30 days after so renting the landlord shall register the accommodations as provided in Section 7. The Administrator may order a decrease in the maximum rent as provided in Section 5 (c).

(f) For housing accommodations constructed with priority rating from the United States or any agency thereof for which the rent has been heretofore or is hereafter approved by the United States or any agency thereof, the rent so approved, but in no event more than the rent on [insert maximum rent date], or, if the accommodations were not rented on that date, more than the first rent after that date.[4]

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[3] In Maximum Rent Regulations with an effective date of September 1, 1942, or earlier, add the following words: "but in no event more than the maximum rent provided for such accommodations by any order of the Administrator issued prior to September 22, 1942."

[4] The above language in Section 4 (f) is contained in all Maximum Rent Regulations with a maximum rent date of March 1, 1942. In Maximum Rent Regulations with a 1941 maximum rent date, the language in Section 4 (f) is as follows: "For housing accommodations

(g) For housing accommodations constructed by the United States or any agency thereof, or by a State of the United States or any of its political subdivisions, or any agency of the State or any of its political subdivisions, and owned by any of the foregoing, the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on [insert maximum rent date], as determined by the owner of such accommodations: *Provided, however,* That any corporation formed under the laws of a State shall not be considered an agency of the United States within the meaning of this paragraph. The Administrator may order a decrease in the maximum rent as provided in section 5 (c).

(h) For housing accommodations rented to either Army or Navy personnel, including civilian employes of the War and Navy Departments, for which the rent is fixed by the national rent schedule of the War or Navy Department, the rents established on the effective date of this Maximum Rent Regulation by such rent schedule. The Administrator may order an increase in such rents, if he finds that such increase is not inconsistent with the purposes of the Act or this Maximum Rent Regulation.

(i) For housing accommodations with a maximum rent established, prior to March 1, 1943, under the first paragraph of Section 5 (c) as that paragraph appeared in this Maximum Rent Regulation prior to such date,[3] the rent on March 1, 1943; or, if the accommodations were not rented on that date, the last rent prior thereto, but in no event more than the maximum rent established under such first paragraph of Section 5 (a). The Administrator may order a decrease in the maximum rent as provided in Section 5 (c) (8).

SECTION 5. *Adjustments and other determinations.* In the circumstances enumerated in this section, the Administrator may issue an order changing the maximum rents otherwise allowable or the minimum services required. In those cases involving a major capital improvement, an increase or decrease in the furniture, furnishings or equipment; an increase or decrease of services, an increase or decrease in the number of subtenants or other occupants, or a deterioration, the adjustment in the maximum rent shall be the amount the Administrator finds would have been on [insert maximum rent date], the difference in the rental value of the housing accommodations by reason of such change: *Provided, however,* That no adjustment shall be ordered where it appears that the rent on the date determining the maximum rent was fixed in contemplation of and so as to reflect such change. In all other cases, except those under paragraph (a)(7) and (c)(6) of this section, the adjustment shall be on the basis of the rent which the Administrator finds was generally prevailing in the Defense-Rental Area for comparable housing accommodations on [insert maximum rent date]:

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constructed with priority rating from the United States or any agency thereof for which the rent has been heretofore or is hereafter approved by the United States or any agency thereof, the rent so approved, but in no event more than the first rent for such accommodations." In Maximum Rent Regulation No. 52 (Santa Maria, Calif.), however, the language is as set forth above for Maximum Rent Regulations with a maximum rent date of March 1, 1942.

[3] Prior to March 1, 1943, the first paragraph of Section 5 (c) read as follows: "Where, at the expiration or other termination of an underlying lease or other rental agreement, housing accommodations or a predominant part thereof are occupied by one or more subtenants or other persons occupying under a rental agreement with the tenant, the landlord may rent the entire premises for use by similar occupancy for a rent not in excess of the aggregate maximum rents of the separate dwelling units, or may rent the separate dwelling units for rents not in excess of the maximum rents applicable to such units."

Provided, That in cases under paragraph (c)(8) of this section due consideration shall be given to any increased occupancy of the accommodations since that date by subtenants or other persons occupying under a rental agreement with the tenant. In cases involving construction, due consideration shall be given to increased costs of construction, if any, since [insert maximum rent date]. In cases under paragraph (a)(7) and (c)(6) of this section the adjustment shall be on the basis of the rents which the Administrator finds were generally prevailing in the Defense-Rental Area for comparable housing accommodations during the year ending on [insert maximum rent date].

(a) Any landlord may file a petition for adjustment to increase the maximum rent otherwise allowable, only on the grounds that:

(1) There has been on or after the effective date of this Maximum Rent Regulation a substantial change in the housing accommodations by a major capital improvement as distinguished from ordinary repair, replacement and maintenance.

(2) There was, on or prior to [insert maximum rent date], a substantial change in the housing accommodations by a major capital improvement as distinguished from ordinary repair, replacement and maintenance, and the rent on [insert maximum rent date] was fixed by a lease or other rental agreement which was in force at the time of such change.

(3) There has been a substantial increase in the services, furniture, furnishings or equipment provided with the housing accommodations since the date or order determining its maximum rent. No increase in the maximum rent shall be ordered on the ground set forth in this paragraph (a) (3) unless the increase in services, furniture, furnishings or equipment occurred with the consent of the tenant or while the accommodations were vacant: *Provided*, That an adjustment may be ordered, although the tenant refuses to consent to the increase in services, furniture, furnishings or equipment, if the Administrator finds that such increase (i) is reasonably required for the operation of a multiple dwelling structure or other structure of which the accommodations are a part or (ii) is necessary for the preservation or maintenance of the accommodations.

(4) The rent on the date determining the maximum rent was materially affected by the blood, personal or other special relationship between the landlord and the tenant and as a result was substantially lower than the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on [insert maximum rent date]: *Provided*, That no adjustment under this subparagraph increasing the maximum rent shall be made effective with respect to any accommodations regularly rented to employees of the landlord while the accommodations are rented to an employee, and no petition for such an adjustment will be entertained until the accommodations have been or are about to be rented to one other than an employee.

(5) There was in force on [insert maximum rent date], a written lease, for a term commencing on or prior to [insert date one year before maximum rent date], requiring a rent substantially lower

than the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on [insert maximum rent date]; or the housing accommodations were not rented on [insert maximum rent date], but were rented during the two months ending on that date and the last rent for such accommodations during that two-month period was fixed by a written lease, for a term commencing on or prior to [insert date one year before maximum rent date], requiring a rent substantially lower than the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on [insert maximum rent date].

(6) The rent on the date determining the maximum rent was established by a lease or other rental agreement which provided for a substantially higher rent at other periods during the term of such lease or agreement.

(7) The rent on the date determining the maximum rent was substantially lower than at other times of year by reason of seasonal demand, or seasonal variations in the rent, for such housing accommodations. In such cases the Administrator's order may if he deems it advisable provide for different maximum rents for different periods of the calendar year.

(8) There has been, since [insert maximum rent date], either (i) a substantial increase in the number of subtenants or other persons occupying the accommodations or a part thereof under a rental agreement with the tenant, or (ii) a substantial increase in the number of occupants, in excess of normal occupancy for that class of accommodations on [insert maximum rent date], or (iii) an increase in the number of occupants over the number contemplated by the rental agreement on the date determining the maximum rent, where the landlord on that date had a regular and definite practice of fixing different rents for the accommodations for different numbers of occupants.

(b) (1) If, on the effective date of this Maximum Rent Regulation, the services provided for housing accommodations are less than the minimum services required by Section 3, the landlord shall either restore and maintain such minimum services or, within 30 days[4] after such effective date, file a petition requesting approval of the decreased services. If, on such effective date,[5] the furniture, furnishings or equipment provided with housing accommodations are less than the minimum required by Section 3, the landlord shall, within 30 days after such date, file a written report showing the decrease in furniture, furnishings or equipment.

(2) Except as above provided, the landlord shall, until the accommodations become vacant, maintain the minimum services, furniture, furnishings, and equipment unless and until he has filed a petition to decrease the services, furniture, furnishings, or equipment and an order permitting a decrease has been entered thereon; however, if it is impossible to provide the minimum services, furniture, furnishings, or equipment he shall file a petition within 10 days after the change occurs. When the accommodations become vacant the landlord may,

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[4] In Maximum Rent Regulation No. 53, insert, for the Los Angeles Defense-Rental Area, "60 days" instead of "30 days."

[5] In Maximum Rent Regulations with an effective date of November 1, 1942, or earlier, insert "December 1, 1942," instead of the words "such effective date."

on renting to a new tenant, decrease the services, furniture, furnishings, or equipment below the minimum; within 10 days after so renting the landlord shall file a written report showing such decrease.

(3) The order on any petition under this paragraph may require an appropriate adjustment in the maximum rent; and any maximum rent for which a report is required by this paragraph may be decreased in accordance with the provisions of Section 5 (c) (3). If the landlord fails to file the petition or report required by this paragraph within the time specified, or decreases the services, furniture, furnishings, or equipment without an order authorizing such decrease where such order is required, the rent received by the landlord for any rental period commencing on or after such decrease or the effective date of this Maximum Rent Regulation,[7] whichever is the later, shall be received subject to refund to the tenant of any amount in excess of the maximum rent which may later be fixed by any order decreasing the maximum rent on account of such decrease in services, furniture, furnishings, or equipment. In such case, any order decreasing the maximum rent shall be effective to decrease such rent from the beginning of the first rental period after the decrease in services, furniture, furnishings, or equipment or after the effective date of this Maximum Rent Rgeulation,[7] whichever is the latef. The foregoing provisions and any refund thereunder do not affect any civil or criminal liability provided by the Act for failure to comply with any requirement of this paragraph.

(c) The Administrator at any time, on his own initiative or on application of the tenant, may order a decrease of the maximum rent otherwise allowable, only on the grounds that:

(1) The maximum rent for housing accommodations under paragraph (c), (d), (e), or (g) of Section 4 is higher than the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on [insert maximum rent date].

(2) There has been a substantial deterioration of the housing accommodations other than ordinary wear and tear since the date or order determining its maximum rent.

(3) There has been a decrease in the minimum services, furniture, furnishings, or equipment required by Section 3 since the date or order determining the maximum rent.

(4) The rent on the date determining the maximum rent was materially affected by the blood, personal, or other special relationship between the landlord and the tenant and as a result was substantially higher than the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on [insert maximum rent date].

(5) The rent on the date determining the maximum rent was established by a lease or other rental agreement which provided for a substantially lower rent at other periods during the term of such lease or agreement.

(6) The rent on the date determining the maximum rent was substantially higher than at other times of year by reason of seasonal demand, or seasonal variations in the rent, for such housing accommodations. In such cases the Administrator's order may if he deems it advisable provide for different maximum rents for different periods of the calendar year.

(7) There has been a substantial decrease in the number of subtenants or other occupants since an order under paragraph (a) (8) or (c) (8) of this section.

(8) The maximum rent is established under Section 4 (i) and is higher than the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on [insert maximum rent date], taking into consideration any increased occupancy of such accommodations since that date by subtenants or other persons occupying under a rental agreement with the tenant: *Provided*, That no decrease shall be ordered below the rent on [insert maximum rent date].

(d) If the rent on the date determining the maximum rent, or any other fact necessary to the determination of the maximum rent, is in dispute between the landlord and the tenant, or is in doubt, or is not known, the Administrator on petition of the landlord filed within 30 days after the effective date of this Maximum Rent Regulation, or at any time on his own initiative, may enter an order fixing the maximum rent by determining such fact; or if the Administrator is unable to ascertain such fact he shall enter the order on the basis of the rent which he finds was generally prevailing in the Defense-Rental Area for comparable housing accommodations on [insert maximum rent date].

(e) Where housing accommodations or a predominant part thereof, are occupied by one or more subtenants or other persons occupying under a rental agreement with the tenant, the tenant may petition the Administrator for leave to exercise any right he would have except for this Maximum Rent Regulation to sell his underlying lease or other rental agreement. The Administrator may grant such petition if he finds that the sale will not result, and that sales of such character would not be likely to result, in the circumvention or evasion of the Act or this Maximum Rent Regulation. He may require that the sale be made on such terms as he deems necessary to prevent such circumvention or evasion.

(f) Where a petition is filed by a landlord on one of the grounds set out in paragraph (a) of this section, the Administrator may enter an interim order increasing the maximum rent until further order, subject to refund by the landlord to the tenant of any amount received in excess of the maximum rent established by final order upon such petition. The receipt by the landlord of any increased rent authorized by such interim order shall constitute an agreement by the landlord with the tenant to refund to the tenant any amount received in excess of the maximum rent established by final order. The landlord shall make such refund either by repayment in cash or, where the tenant remains in occupancy after the effective date of the final order, by deduction from the next installment of rent, or both.

(g) No adjustment in the maximum rent shall be ordered on the ground that the landlord, since the date or order determining the maximum rent, has, as a part of or in connection with a lease of housing accommodations, granted the tenant an option to buy the accommodations which are the subject of the lease. Where a lease of housing accommodations was in force on the date determining the maximum rent, and the landlord had on that date, as a part of

or in connection with such lease, granted the tenant an option to buy the accommodations which are the subject of the lease, the Administrator may, on or after the termination of such lease, on his own initiative or on application of the tenant, enter an order fixing the maximum rent on the basis of the rents which the Administrator finds were generally prevailing in the Defense-Rental Area for comparable housing accommodations not subject to an option to buy on [insert maximum rent date].

SECTION 6. *Restrictions on removal of tenant.*—(a) So long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodations, by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, notwithstanding that such tenant has no lease or that his lease or other rental agreement has expired or otherwise terminated, and regardless of any contract, lease, agreement or obligation heretofore or hereafter entered into which provides for entry of judgment upon the tenant's confession for breach of the covenants thereof or which otherwise provides contrary hereto, unless:

(1) The tenant, who had a written lease or other written rental agreement, has refused upon demand of the landlord to execute a written extension or renewal thereof for a further term of like duration but not in excess of one year but otherwise on the same terms and conditions as the previous lease or agreement, except insofar as such terms and conditions are inconsistent with this Maximum Rent Regulation; or

(2) The tenant has unreasonably refused the landlord access to the housing accommodations for the purpose of inspection or of showing the accommodations to a prospective purchaser, mortgagee or prospective mortgagee, or other person having a legitimate interest therein: *Provided, however*, That such refusal shall not be ground for removal or eviction if such inspection or showing of the accommodations is contrary to the provisions of the tenant's lease or other rental agreement; or

(3) The tenant (i) has violated a substantial obligation of his tenancy, other than an obligation to pay rent, and has continued, or failed to cure, such violation after written notice by the landlord that the violation cease, or (ii) is committing or permitting a nuisance or is using or permitting a use of the housing accommodations for an immoral or illegal purpose; or

(4) The tenant's lease or other rental agreement has expired or otherwise terminated, and at the time of termination the occupants of the housing accommodations are subtenants or other persons who occupied under a rental agreement with the tenant, and no part of the accommodations is used by the tenant as his own dwelling.

(5) The landlord seeks in good faith to recover possession for the immediate purpose of demolishing the housing accommodations or of substantially altering or remodeling it in a manner which cannot practicably be done with the tenant in occupancy and the plans for such alteration or remodeling have been approved by the proper authorities, if such approval is required by local law; or

(6) The landlord owned, or acquired an enforceable right to buy or the right to possession of, the housing accommodations prior to the

effective date of this Maximum Rent Regulation,* and seeks in good faith to recover possession of such accommodations for immediate use and occupancy as a dwelling for himself. If a tenant has been removed or evicted under this paragraph (a) (6) from housing accommodations, the landlord shall file a written report on a form provided therefor before renting the accommodations or any part thereof during a period of six months after such removal or eviction.

(b) (1) No tenant shall be removed or evicted on grounds other than those stated above unless, on petition of the landlord, the Administrator certifies that the landlord may pursue his remedies in accordance with the requirements of the local law. The Administrator shall so certify if the landlord establishes that removals or evictions of the character proposed are not inconsistent with the purposes of the Act or this Maximum Rent Regulation and would not be likely to result in the circumvention or evasion thereof.

(2) Removal or eviction of a tenant of the vendor, for occupancy by a purchaser who has acquired his rights in the housing accommodations on or after the effective date of this Maximum Rent Regulation,* is inconsistent with the purposes of the Act and this Maximum Rent Regulation and would be likely to result in the circumvention or evasion thereof, unless (i) the payment or payments of principal made by the purchaser, excluding any payments made from funds borrowed for the purpose of making such principal payments, aggregate 33⅓% or more of the purchase price, and (ii) a period of three months has elapsed after the issuance of a certificate by the Administrator as hereinafter provided. For the purposes of this paragraph (b) (2), the payments of principal may be made by the purchaser conditionally or in escrow to the end that they shall be returned to the purchaser in the event the Administrator denies a petition for a certificate. If the Administrator finds that the required payments of principal have been made, he shall, on petition of either the vendor or purchaser, issue a certificate authorizing the vendor or purchaser to pursue his remedies for removal or eviction of the tenant in accordance with the requirements of the local law at the expiration of three months after the date of issuance of such certificate.

In no other case shall the Administrator issue a certificate for occupancy by a purchaser who has acquired his rights in the housing accommodations on or after the effective date of this Maximum Rent Regulation,* unless he finds (i) that the vendor has or had a substantial necessity requiring the sale and that a reasonable sale or disposition of the accommodations could not be made without removal or eviction of the tenant, or (ii) that other special hardship would result, or (iii) that equivalent accommodations are available for rent, into which the tenant can move without substantial hardship or loss; under such circumstances the payment by the purchaser of 33⅓% of the purchase price shall not be a condition to the issuance of a certificate, and the certificate may authorize the vendor or purchaser, either immediately or at the expiration of three months, to pursue

*In Maximum Rent Regulations with an effective date of October 1, 1942, or earlier, insert "October 20, 1942," instead of the words "the effective date of this Maximum Rent Regulation." In Maximum Rent Regulation No. 60 (Adams and Clay Counties, Nebr.), insert "November 6, 1942," for the words "the effective date of this Maximum Rent Regulation." In Maximum Rent Regulation No. 51 (Fort Worth, Tex.), insert "November 1, 1942," for the words "the effective date of this Maximum Rent Regulation."

his remedies for removal or eviction of the tenant in accordance with the requirements of the local law.

(c) (1) The provisions of this section do not apply to a subtenant or other person who occupied under a rental agreement with the tenant, where removal or eviction of the subtenant or other such occupant is sought by the landlord of the tenant, unless under the local law there is a tenancy relationship between the landlord and the subtenant or other such occupant.

(2) The provisions of this section shall not apply to housing accommodations rented to either Army or Navy personnel, including civilian employees of the War and Navy Departments, for which the rent is fixed by the national rent schedule of the War or Navy Department.

(3) The provisions of this section shall not apply to an occupant of a furnished room or rooms not constituting an apartment, located within the residence occupied by the landlord or his immediate family, where such landlord rents to not more than two occupants within such residence.

(d) (1) Every notice to a tenant to vacate or surrender possession of housing accommodations shall state the ground under this section upon which the landlord relies for removal or eviction of the tenant. A written copy of such notice shall be given to the Area Rent Office within 24 hours after the notice is given to the tenant.

No tenant shall be removed or evicted from housing accommodations by court process or otherwise, unless, at least ten days (or, where the ground for removal or eviction is non-payment of rent, the period required by the local law for notice prior to the commencement of an action for removal or eviction in such cases, but in no event less than three days) prior to the time specified for surrender of possession and to the commencement of any action for removal or eviction, the landlord has given written notices of the proposed removal or eviction to the tenant and to the Area Rent Office, stating the ground under this section upon which such removal or eviction is sought and specifying the time when the tenant is required to surrender possession.[9]

Where the ground for removal or eviction of a tenant is nonpayment of rent, every notice under this paragraph (d) (1) shall state the rent for the housing accommodations, the amount of rent due and the rental period or periods for which such rent is due. The provisions of this paragraph (d) (1) shall not apply where a certificate has been issued by the Administrator pursuant to the provisions of paragraph (b) of this section.

(2) At the time of commencing any action to remove or evict a tenant, including an action based upon nonpayment of rent, the landlord shall give written notice thereof to the Area Rent Office stating the title of the case, the number of the case where that is possible, the court in which it is filed, the name and address of the tenant.

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[9] In Maximum Rent Regulation No. 24 (Baltimore, Maryland), add "*Provided, however,* That the requirements of this sentence shall not apply to housing accommodations within the City of Baltimore, Maryland, when the ground for the removal or eviction of a tenant is non payment of rent."

In Maximum Rent Regulation No. 28, add the above proviso substituting the words "Northeastern New Jersey Defense-Rental Area" for the words "City of Baltimore, Maryland."

In Maximum Rent Regulation No. 53, add the above proviso substituting the words "Trenton Defense Rental Area" for the words "City of Baltimore, Maryland."

and the ground under this section on which removal or eviction is sought.

(e) No provision of this section shall be construed to authorize the removal of a tenant unless such removal is authorized under the local law.

SECTION 7. *Registration.*—Within 45 days [10] after the effective date of this Maximum Rent Regulation, or within 30 days after the property is first rented, whichever date is the later, every landlord of housing accommodations rented or offered for rent shall file in triplicate a written statement on the form provided therefor to be known as a registration statement. The statement shall identify each dwelling unit and specify the maximum rent provided by this Maximum Rent Regulation for such dwelling unit and shall contain such other information as the Administrator shall require. The original shall remain on file with the Administrator and he shall cause one copy to be delivered to the tenant and one copy, stamped to indicate that it is a correct copy of the original, to be returned to the landlord. In any subsequent change of tenancy the landlord shall exhibit to the new tenant his stamped copy of the registration statement, and shall obtain the tenant's signature and the date thereof, on the back of such statement. Within five days after renting to a new tenant, the landlord shall file a notice on the form provided therefor, on which he shall obtain the tenant's signature, stating that there has been a change in tenancy, that the stamped copy of the registration statement has been exhibited to the new tenant and that the rent for such accommodations is in conformity therewith.

No payment of rent need be made unless the landlord tenders a receipt for the amount to be paid.

When the maximum rent is changed by order of the Administrator, the landlord shall deliver his stamped copy of the registration statement to the Area Rent Office for appropriate action reflecting such change.

The foregoing provisions of this section shall not apply to housing accommodations under Section 4 (g). The owner of such housing accommodations shall file a schedule or schedules, setting out the maximum rents for all such accommodations in the Defense-Rental Area and containing such other information as the Administrator shall require. A copy of such schedule or schedules shall be posted by the owner in a place where it will be available for inspection by the tenants of such housing accommodations.

The provisions of this section shall not apply to housing accommodations rented to either Army or Navy personnel, including any civilian employees of the War and Navy Departments, for which the rent is fixed by the national rent schedule of the War or Navy Department.[11]

SECTION 8. *Inspection.*—Any person who rents or offers for rent or acts as a broker or agent for the rental of housing accommoda-

[10] In some Maximum Rent Regulations "60 days" or "75 days" instead of "45 days" are provided; for the Alaska Defense Rental Area "135 days" are provided.

[11] At the end of Section 7 of Maximum Rent Regulation No. 53, effective November 1, 1942, the following paragraph is added (as amended): "The provisions of this section shall not apply to housing accommodations in the Cincinnati Defense-Rental Area, except that no payment of rent need be made unless the landlord tenders a receipt for the amount to be paid."

tions and any tenant shall permit such inspection of the accommodations by the Administrator as he may, from time to time, require.

SECTION 9. *Evasion.*—The maximum rents and other requirements provided in this Maximum Rent Regulation shall not be evaded, either directly or indirectly, in connection with the renting or leasing or the transfer of a lease of housing accomodations, by way of absolute or conditional sale, sale with purchase money or other form or mortgage, or sale with option to repurchase, or by modification of the practices relating to payment of commissions or other charges or by modification of the services furnished with housing accommodations, or otherwise.

SECTION 10. *Enforcement.*—Persons violating any provision of this Maximum Rent Regulation are subject to criminal penalties, civil enforcement actions and suits for treble damages as provided for by the Act.

SECTION 11. *Procedure.*—All registration statements, reports and notices provided for by this Maximum Rent Regulation shall be filed with the Area Rent Office. All landlord's petitions and tenant's applications shall be filed with such office in accordance with Procedural Regulation No. 3.

SECTION 12. *Petitions for amendment.*—Persons seeking any amendment of general applicability to any provision of this Maximum Rent Regulation may file petitions therefor in accordance with Procedural Regulation No. 3.

SECTION 13. *Definitions.*—(a) When used in this Maximum Rent Regulation:

(1) The term "Act" means the Emergency Price Control Act of 1942.

(2) The term "Administrator" means the Price Administrator of the Office of Price Administration, or the Rent Director or such other person or persons as the Administrator may appoint or designate to carry out any of the duties delegated to him by the Act.

(3) The term "Rent Director" means the person designated by the Administrator as director of the Defense-Rental Area or such person or persons as may be designated to carry out any of the duties delegated to the Rent Director by the Administrator.

(4) The term "Area Rent Office" means the office of the Rent Director in the Defense-Rental Area.

(5) The term "person" includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative of any of the foregoing, and includes the United States or any agency thereof, or any other government, or any of its political subdivisions, or any agency of any of the foregoing.

(6) The term "housing accommodations" means any building, structure, or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes, together with all privileges, services, furnishings, furniture, equipment, facilities and improvements connected with the use or occupancy of such property.

(7) The term "services" includes repairs, decorating and maintenance, the furnishing of light, heat, hot and cold water, telephone, elevator service, window shades, and storage, kitchen, bath, and laundry facilities and privileges, maid service, linen service, janitor serv-

ice, the removal of refuse and any other privilege or facility connected with the use or occupancy of housing accommodations.

(8) The term "landlord" includes an owner, lessor, sublessor, assignee or other person receiving or entitled to receive rent for the use or occupancy of any housing accommodations, or an agent of any of the foregoing.

(9) The term "tenant" includes a subtenant, lessee, sublessee, or other person entitled to the possession or to the use or occupancy of any housing accommodations.

(10) The term "rent" means the consideration, including any bonus, benefit, or gratuity, demanded or received for the use or occupancy of housing accommodations or for the transfer of a lease of such accommodations.

(11) The term "hotel" means any establishment generally recognized as such in its community, containing more than 50 rooms and used predominantly for transient occupancy.

(12) The term "rooming house" means, in addition to its customary usage, a building or portion of a building other than a hotel in which a furnished room or rooms not constituting an apartment are rented on a short time basis of daily, weekly, or monthly occupancy to more than two paying tenants not members of the landlord's immediate family. The term includes boarding houses, dormitories, auto camps, trailers, residence clubs, tourist homes or cabins, and all other establishments of a similar nature.

(b) Unless the context otherwise requires, the definitions set forth in section 302 of the Emergency Price Control Act of 1942 shall apply to other terms used in this Maximum Rent Regulation.

SECTION 14. *Effective date of the regulation.*—This Maximum Rent Regulation shall become effective [insert effective date].

Issued [insert date of issuance].

PRENTISS M. BROWN,
Administrator.

UNITED STATES OF AMERICA
OFFICE OF PRICE ADMINISTRATION
WASHINGTON, D. C.

Revised PROCEDURAL REGULATION No. 3

AS AMENDED TO JULY 1, 1943

REVISED PROCEDURAL REGULATION 3[1]

AS AMENDED TO JULY 1, 1943

Procedure for Adjustments, Amendments, Protests and Interpretations Under Rent Regulations

Pursuant to the authority of sections 201 (d) and 203 (a) of the Emergency Price Control Act of 1942 (Pub. Law 421, 77th Cong.), Procedural Regulation No. 3—Procedure for the Protest and Amendment of Maximum Rent Regulations and Adjustment Under Such Regulations—is hereby revoked, except as provided in § 1300.253 of this regulation, and the following rules are prescribed for adjustments, amendments, protests and interpretations under maximum rent regulations.

Sec.

[1] Published in Federal Register, 8 F.R. 526, 1798, 3534, 5481.

AUTHORITY: §§ 1300.201 to 1300.253, inclusive, issued under Pub. Law 421, 77th Cong.

§ 1300.201. *Purposes of this regulation.*—It is the purpose of this regulation to prescribe and explain the procedure of the Office of Price Administration in making various kinds of determinations in connection with the establishment of maximum rents.

(a) Subpart A deals with petitions for adjustment and other relief, provided for by the maximum rent regulations. An adjustment in maximum rent or any other relief can be granted only if the applicable maximum rent regulation contains specific provision for the adjustment or other relief sought.

(b) Subpart B deals with petitions for amendment. A petition for amendment is the appropriate document to file when a petitioner seeks a change of general applicability in the provisions of a maximum rent regulation.

(c) Subpart C deals with protests. A protest is the means provided by the Emergency Price Control Act of 1942 for making a formal claim that a maximum rent regulation or an order issued thereunder is in some respect invalid. Only if a protest has been filed and denied may the protestant file a complaint with the Emergency Court of Appeals to have the maximum rent regulation or order protested, enjoined or set aside in whole or in part.

(d) Subpart D explains the way in which interpretations of the meaning or effect of provisions of maximum rent regulations are given by officers or employees of the Office of Price Administration.

(e) Subpart E contains miscellaneous provisions, and definitions.

SUBPART A—LANDLORDS' PETITIONS AND TENANTS' APPLICATIONS

§ 1300.202. *Right to file petition.*—A petition for adjustment or other relief may be filed by any landlord subject to any provision of a maximum rent regulation who requests such adjustment or relief pursuant to a provision of the maximum rent regulation authorizing such action.

§ 1300.203. *Method of filing, form, and contents.*—A petition for adjustment or other relief provided for by a maximum rent regulation shall be filed with the rent director of the Office of Price Administration for the defense-rental area within which the housing accommodations involved are located. Petitions shall be filed upon forms prescribed by the Administrator and pursuant to instructions stated on such forms and may be accompanied by affidavits or other documents setting forth the evidence upon which the petitioner relies in support of the facts alleged in his petition.

§ 1300.204. *Joint petitions, consolidation.*—Two or more landlords may file a joint petition for adjustment or other relief where the grounds of the petition are common to all landlords joining therein. A joint petition shall be filed and determined in accordance with the rules governing the filing and determination of petitions filed by one landlord. A landlord's petition may include as many housing accommodations as present common questions which can be expeditiously

determined in one proceeding. Whenever the rent director deems it necessary or appropriate, he may order the filing of separate petitions or he may consolidate separate petitions presenting common questions which can be determined expeditiously in one proceeding.

§ 1300.205. *Tenants' applications.*—All tenants' applications provided for by any maximum rent regulation shall be filed with the rent director for the defense-rental area within which the housing accommodations involved are located. The application shall be filed on forms prescribed by the Administrator and pursuant to directions set forth on such forms. Action upon any tenant's application shall be within the discretion of the rent director and the procedure thereon shall be the same as in proceedings initiated by the rent director pursuant to provisions of a maximum rent regulation authorizing such action.

§ 1300.206. *Investigation of petitions and applications.*—Upon the filing of a petition or application pursuant to the provisions of this regulation, the rent director may make such investigation of the facts involved in the petition or application, hold such conferences, and require the filing of such reports, evidence in affidavit form or other material relevant to the proceeding, as he may deem necessary or appropriate for the proper disposition of the petition or application.

§ 1300.207. *Action by rent director on his own initiative.*—In any case where the rent director pursuant to the provisions of a maximum rent regulation, deems it necessary or appropriate to enter an order on his own initiative, he shall before taking such action, serve a notice upon the landlord of the housing accommodations involved stating the proposed action and the grounds therefor.

§ 1300.208. *Action by the rent director on petitions for adjustment or other relief.*—(a) Upon receipt of a petition for adjustment or other relief, and after due consideration, the rent director may either:

(1) Dismiss any petition which fails substantially to comply with the provisions of the applicable maximum rent regulation or of this regulation; or

(2) Grant or deny in whole or in part, any petition which is properly pending before him; or

(3) Notice such petition for oral hearing to be held in accordance with §§ 1300.229 to 1300.237, inclusive, of this regulation; or

(4) Provide an opportunity to present further evidence in affidavit form, in connection with such petition.

(b) An order entered by a rent director upon a petition for adjustment or other relief, or an order entered by a rent director on his own initiative, shall be effective and binding until changed by further order and shall be final subject only to application for review or pro-

test as provided in §§ 1300.209 and 1300.210 and §§ 1300.215 to 1300.228, inclusive, of this regulation. An order entered by a rent director may be revoked or modified at any time upon due notice to the petitioner.

APPLICATION FOR REVIEW OF RENT DIRECTOR'S ACTION

§ 1300.209. *Applications for review.*—(a) Any landlord whose petition for adjustment or other relief has been dismissed or denied in whole or in part by the rent director, or any landlord subject to an order entered by the rent director on his own initiative, may within a period of sixty days after the date of issuance of such determination, regardless of the effective date thereof, file with the rent director an application for review of such determination by the regional administrator for the region in which the defense-rental area office is located: *Provided*, That any landlord subject to an order entered under section 5 (d) of any maximum rent regulation or subject to an order entered by the rent director under § 1300.207 of this regulation, may either apply for review of such order as provided in this section, or may protest any provision of such order as provided in §§ 1300.215 to 1300.223, inclusive, of this regulation. An application for review shall be filed in triplicate upon forms prescribed by the Administrator and pursuant to instructions stated on such forms. Upon the filing of an application for review of such determination, the rent director shall forward the record of the proceedings with respect to which such application is filed to the appropriate regional administrator.

(b) Applications for review shall be deemed filed on the date received by the rent director: *Provided*, That applications for review properly addressed to the rent director, bearing a postmark dated within the sixty-day period specified above, but received after the expiration thereof, shall be deemed to have been filed on the date of the postmark.

§ 1300.210. *Action on applications for review.*—Upon the filing of an application for review in accordance with § 1300.209 of this regulation, and after due consideration, the regional administrator may affirm, revoke, or modify, in whole or in part, the determination of the rent director sought to be reviewed and may enter such order as is necessary or proper. In any case where an application for review does not conform in a substantial respect to the requirements of this regulation, the regional administrator may dismiss such application. An order entered by a regional administrator upon an application for review shall be effective and binding until changed by further

order and shall be final subject only to protest as provided in §§ 1300.215 to 1300.228, inclusive, of this regulation. An order entered by a regional administrator upon an application for review may be revoked or modified at any time upon due notice to the applicant.

SUBPART B—PETITION FOR AMENDMENT

§ 1300.211. *Right to file petition.*—A petition for amendment may be filed at any time by any person subject to or affected by a provision of a maximum rent regulation. A petition for amendment shall propose an amendment of general applicability and shall be granted or denied on the merits of the amendment proposed. The denial of a petition for amendment is not subject to protest or judicial review under the Act.

§ 1300.212. *Place for filing petitions for amendment; form and contents.*—A petition for amendment shall be filed with the Secretary, Office of Price Administration, Washington, D. C. One original and four copies of the petition and of all accompanying documents and briefs shall be filed. Each copy shall be printed, typewritten, mimeographed, or prepared by a similar process, and shall be plainly legible. Copies shall be double spaced, except that quotations shall be single spaced and indented. Every such petition shall be designated "Petition for Amendment" and shall contain, upon the first page thereof, the name of the defense-rental area and the number and date of issuance of the maximum rent regulation to which the petition relates, and the name and address of the petitioner. The petition shall specify the manner in which the petitioner is subject to or affected by the provision of the maximum rent regulation involved, and shall include a specific statement of the particular amendment desired and the facts which make that amendment necessary or appropriate. The petition shall be accompanied by affidavits setting forth the evidence upon which the petitioner relies in his petition.

§ 1300.213. *Joint petitions for amendment.*—Two or more persons may file a joint petition for amendment, where the amendments proposed are identical or substantially similar. Joint petitions shall be filed and determined in accordance with the rules governing the filing and determination of petitions filed by one person. Whenever the Administrator deems it to be necessary or appropriate for the disposition of joint petitions, he may treat such joint petitions as several, and, in any event, he may require the filing of relevant material by each individual petitioner.

§ 1300.214. *Action by the Administrator on petition.*—In the consideration of any petition for amendment, the Administrator may

afford to the petitioner and to other persons likely to have information bearing upon such proposed amendment, or likely to be affected thereby, an opportunity to present evidence or argument in support of, or in opposition to, such proposed amendment. Whenever necessary or appropriate for the full and expeditious determination of common questions raised by two or more petitions for amendment, the Administrator may consolidate such petitions.

SUBPART C—PROTESTS

§ 1300.215. *Right to protest.*—Any landlord subject to any provision of a maximum rent regulation, or of an order issued under § 1300.210 of this regulation, or of an order entered under section 5 (d) of any maximum rent regulation, or of an order entered by the rent director under § 1300.207 of this regulation, may file a protest in the manner set forth below. A landlord is, for the purposes of this regulation, subject to a provision of a maximum rent regulation or of an order only if such provision prohibits or requires action by him. Any protest filed by a landlord not subject to the provision protested, or otherwise not in accordance with the requirements of this regulation, may be dismissed by the Administrator.

§ 1300.216. *Time and place for filing protests.*—(a) Any protest as provided in § 1300.215 of this regulation against a provision of a maximum rent regulation or an order, shall be filed with the Secretary, Office of Price Administration, Washington, D. C., within a period of sixty days after the date of issuance of such regulation or order, regardless of the effective date thereof: *Provided*, That a protest against a provision of a maximum rent regulation based solely on grounds arising after the date of issuance of such maximum rent regulation shall be filed within a period of sixty days after the protestant has had, or could reasonably have had, notice of the existence of such grounds.

(b) Protests shall be deemed filed on the date received by the Secretary, Office of Price Administration, Washington, D. C.: *Provided*, That protests properly addressed to the Secretary bearing a postmark dated within the applicable sixty-day period specified above, but received after the expiration thereof, shall be deemed to have been filed on the date of the postmark.

§ 1300.217 *Form of protest.*—Every protest shall be clearly designated a "Protest" and shall contain, upon the first page thereof, (a) the name of the protestant and of the defense-rental area for which the maximum rent regulation or order protested was issued, (b) a statement whether the protest is against a maximum rent regula-

tion or order, and (c) the date of issuance and the number of such maximum rent regulation or order. One original and five copies of the protest and of all accompanying documents and briefs shall be filed. Each copy shall be printed, typewritten, mimeographed or prepared by a similar process, and should be plainly legible. Copies shall be double spaced, except that quotations shall be single spaced and indented.

§ 1300.218. *Assignment of docket number.*—Upon receipt of a protest it shall be assigned a docket number, of which the protestant shall be notified, and all further papers filed in the proceedings shall contain on the first page thereof the docket number so assigned and the information specified in § 1300.217 of this regulation.

§ 1300.219. *Contents of protest.*—Every protest shall set forth the following:

(a) The name and the post office address of the protestant, the manner in which the protestant, is subject to the provision of the maximum rent regulation or order protested, and the location, by post office address or otherwise, of all housing accommodations involved in the protest.

(b) The name and post office address of the person filing the protest on behalf of the protestant and the name and post office address of the person to whom all communications from the Office of Price Administration relating to the protest shall be sent.

(c) A clear and concise statement of all objections raised by the protestant against the provision of the maximum rent regulation or order protested, each such objection to be separately stated and numbered.

(d) A clear and concise statement of all facts alleged in support of the objections.

(e) A statement of the relief requested by the protestant including, if the protestant requests modification of a provision of the maximum rent regulation or order, the specific changes which he seeks to have made therein.

(f) In cases where the protest is based upon grounds arising after the date of issuance of the maximum rent regulation, a clear and concise statement of facts showing the time when such grounds arose.

(g) A statement signed and sworn to (or affirmed) by the protestant personally or, if a partnership, by a partner or if a corporation or association, by a duly authorized officer, that the protest and documents filed therewith are prepared in good faith and that the facts alleged are true to the best of his knowledge, information and belief. The protestant shall specify which of the facts are known to him to be true and which are alleged on information and belief.

§ 1300.220. *Affidavits or other written evidence in support of protest.*—Every protestant shall file together with his protest the following:

(a) Affidavits setting forth in full all the evidence, the presentation of which is subject to the control of the protestant, upon which the protestant relies in support of the facts alleged in the protest. Each such affidavit shall state the name, post office address, and occupation of the affiant; his business connection, if any, with the protestant; and whether the facts set forth in the affidavit are stated from personal knowledge or on information and belief. In every instance, the affiant shall state in detail the sources of his information: *Provided*, That on a protest of an order, the evidence and all documents in proceedings had in connection therewith, shall be a part of the record on protest and need not be filed by the protestant.

(b) A statement by the protestant in affidavit form setting forth in detail the nature and sources of any further evidence, not subject to his control, upon which he believes he can rely in support of the facts alleged in his protest.

(c) If necessary, a further statement by the protestant in affidavit form setting forth the nature and sources of any evidence which the protestant is unable to present solely because of the time limit for the filing of protests and supporting material. Such further statement may contain a request for an opportunity to present such further evidence, which request shall state specifically the amount of time needed for preparation of such evidence. Any affidavits providing further evidence, pursuant to order, shall contain the information required by subparagraph (a) of this section.

§ 1300.221. *Submission of brief by protestant.*—The protestant may file with his protest and accompanying evidential material a brief in support of the objections set forth in the protest. Such brief shall be submitted as a separate document, distinct from the protest and evidential material.

§ 1300.222. *Joint protests.*—Two or more landlords may file a joint protest. Joint protests shall be filed and determined in accordance with the rules governing the filing and determination of protests filed severally. A joint protest shall be verified in accordance with § 1300.219 (g) of this regulation by each protestant. A joint protest may be filed only where at least one ground is common to all persons joining in it. Whenever the Administrator deems it to be necessary or appropriate for the disposition of joint protests, he may treat such joint protests as several, and, in any event, he may require the filing of relevant materials by the individual protestants.

§ 1300.223. *Amendment of protest and presentation of supplemental evidence.*—(a) The protestant may amend his protest or his affidavits and briefs submitted therewith, or may add to such material within a period of sixty days after the issuance of the maximum rent regulation or order against a provision of which the protest is filed, or, in the case of a protest based solely on grounds arising after the date of issuance of a maximum rent regulation, within sixty days after the protestant has had or could reasonably have had notice of the existence of such grounds.

(b) After the time prescribed in paragraph (a) of this section, a protestant may be granted permission to amend his protest or to present further evidence in connection therewith, when, in the judgment of the Administrator, such permission will not unduly delay the completion of proceedings on the protest. No amendment which adds a new ground of protest will be permitted.

§ 1300.224. *Protest and evidential material not conforming to this regulation.*—In any case where a protest or accompanying evidential material does not conform, in a substantial respect, to the requirements of this regulation, the Administrator may dismiss such protest, or, in his discretion, may strike such evidential material from the record of the proceedings in connection with the protest. A protest against the provisions of an order entered under section 5 (d) of any maximum rent regulation or of an order entered by a rent director under § 1300.207 of this regulation may be dismissed where, prior to the filing of such protest, the landlord filed an application for review of such order as provided in § 1300.209 of this regulation.

§ 1300.225. *Action by the administrator on protest.*—(a) Within a reasonable time after the filing of any protest in accordance with this regulation, but in no event more than thirty days after such filing or ninety days after the issuance of the maximum rent regulation or order against a provision of which the protest is filed, whichever occurs later, the Administrator shall:

(1) Grant or deny such protest in whole or in part; or

(2) Notice such protest for oral hearing, to be held in accordance with the provisions of §§ 1300.229 to 1300.237, inclusive of this regulation; or

(3) Provide an opportunity to present further evidence in connection with such protest. Before, or within a reasonable time after, the presentation of such further evidence, the Administrator may notice such protest for oral hearing in accordance with subparagraph (2) of this section, may include additional material in the record of the proceedings in connection with the protest in accordance with § 1300.226 of this regulation, or may take such other action as may be appropriate to the disposition of the protest.

(b) Notice of any such action taken by the Administrator shall promptly be served upon the protestant.

(c) Where the Administrator has ordered a hearing on a protest or has provided an opportunity for the presentation of further evidence in connection therewith, he shall, within a reasonable time after the completion of such hearing or the presentation of such evidence, grant or deny such protest in whole or in part.

§ 1300.226. *Statements in support of maximum rent regulation or order.*—(a) Any person affected by the provisions of a maximum rent regulation, or of an order issued thereunder, may at any time after the issuance of such regulation or order submit to the Administrator a statement in support of any such provisions. Such statement shall include the name and post office address of such person, the nature of his business, and the manner in which such person is affected by the maximum rent regulation or order in question, and may be accompanied by affidavits and other data. Each such supporting statement shall conform to the requirements of § 1300.220 of this regulation.

(b) In the event that a protest has been, or is subsequently, filed against a provision of a maximum rent regulation or order in support of which a statement has been submitted, the Administrator may include such statement in the record of the proceedings taken in connection with such protest. If such supporting statement is incorporated into the record, and is not so incorporated at an oral hearing, copies of such supporting statement shall be served upon the protestant, and the protestant shall be given a reasonable opportunity to present evidence in rebuttal thereof.

ORAL HEARINGS

§ 1300.227. *Inclusion of material in the record by the Administrator.*—The Administrator shall include in the record of the proceedings on the protest such evidence, in the form of affidavits or otherwise, as he deems appropriate in support of the provision against which the protest is filed. When such evidence is incorporated into the record, and is not so incorporated at an oral hearing, copies thereof shall be served upon the protestant, and the protestant shall be given a reasonable opportunity to present evidence in rebuttal thereof.

§ 1300.228. *Consolidation of protests.*—Whenever necessary or appropriate for the full and expeditious determination of common questions raised by two or more protests the Administrator may consolidate such protests.

§ 1300.229. *Requests for oral hearing.*—Any protestant, applicant, or petitioner may request an oral hearing. Such request shall be accompanied by a showing as to why the filing of affidavits or other

written evidence and briefs will not permit the fair and expeditious disposition of the protest, application for review, or petition. In the event that an oral hearing is ordered in connection with a protest, application for review, or petition, notice thereof shall be served on the protestant, applicant, or petitioner not less than five days prior to such hearing. The time and place of the hearing shall be stated in the notice. Any such oral hearing may be limited in such manner and to the extent deemed appropriate to the expeditious determination of the proceeding.

§ 1300.230. *Conference prior to oral hearing.*—At any time prior to the commencement of the oral hearing, the protestant, applicant, or petitioner may be requested to appear at a conference to consider (a) the simplification of issues; (b) the possibility of obtaining stipulations of fact which will avoid unnecessary proof; and (c) such other matters as may expedite the conduct of the oral hearing. No transcript of such conference shall be kept, but the officer authorized to conduct such conference shall incorporate in the record of the proceedings any written stipulations or agreements made at, or as a result of, the conference. If the circumstances are such that an oral conference is impracticable, such negotiations may be conducted by correspondence.

§ 1300.231. *Continuance or adjournment of oral hearing.*—The oral hearing shall be held at the time and place specified by the notice of hearing but may be continued or adjourned to a later day or to a different place. Notice of such adjournment or continuance may be by announcement at the oral hearing.

§ 1300.232. *Conduct of the oral hearing.*—(a) An oral hearing on a protest, application for review, or petition shall be conducted by the Administrator or such officer or employee of the Office of Price Administration (hereinafter referred to as the "presiding officer") as the Administrator may appoint or designate for that purpose. Any such appointment or designation may be made or revoked at any time.

(b) The oral hearing shall be conducted in such manner as will permit the protestant, applicant, or petitioner to present evidence and argument to the fullest extent compatible with expeditious decision of the issues. To this end:

(1) The rules of evidence prevailing in courts of law or equity shall not be controlling; and

(2) The presiding officer, having due regard to the need for expeditious decision and for fair treatment to the protestant, applicant, or petitioner, may restrict oral argument and the examination and cross-examination of witnesses: *Provided*, That in no event shall this section be construed to limit the right of the protestant, applicant, or petitioner to submit affidavits or other written evidence or arguments.

§ 1300.233. *Filing of briefs.*—The presiding officer shall allow the protestant, applicant, or petitioner to file briefs or written arguments within such time as he shall designate.

§ 1300.234. *Subpoenas.*—(a) Any protestant, applicant, or petitioner may apply for a subpoena in connection with an oral hearing. Applications for subpoenas when made prior to the oral hearing shall be filed as follows: (1) in connection with a protest against a provision of a maximum rent regulation or order, with the Secretary, Office of Price Administration, Washington, D. C.; (2) in connection with a proceeding under §§ 1300.207 to 1300.210, inclusive, of this regulation, with the rent director or regional administrator, as the case may be, before whom such proceeding is pending. The Administrator may grant or deny an application for a subpoena or refer it to the presiding officer appointed or designated under § 1300.232 who may thereafter grant or deny the application. Applications for subpoenas made during the oral hearing shall be submitted to the presiding officer, who may grant or deny such application.

(b) All applications for subpoenas shall specify the name of the witness and the nature of the facts to be proved by him and, if calling for the production of documents, shall specify them with such particularity as will enable them to be identified for purposes of production.

(c) Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fees and mileage specified in section 202 (f) of the act. When the subpoena is issued at the instance of the Administrator, fees and mileage need not be tendered.

§ 1300.235. *Witnesses.*—Witnesses summoned before the presiding officer at any hearing shall be paid the fees and mileage specified by section 202 (f) of the Act. Witness fees and mileage shall be paid by the person at whose instance the witness appears.

§ 1300.236. *Contemptuous conduct.*—Contemptuous conduct at any oral hearing shall be ground for exclusion from the hearing. The refusal of a witness to answer any question which has been ruled to be proper shall, in the discretion of the presiding officer, be ground for the striking out of all testimony previously given by such witness on related matters.

§ 1300.237. *Stenographic report of oral hearing.*—A stenographic report of the oral hearing shall be made, a copy of which shall be available for inspection during business hours in the office of the Secretary, Office of Price Administration, Washington, D. C., or in the appropriate regional office or defense-rental area office.

OPINION AND TRANSCRIPT ON PROTESTS

§ 1300.238. *Opinion denying protest in whole or in part.*—In the event that the Administrator denies any protest in whole or in part, he shall inform the protestant of the grounds upon which such decision is based, and of any economic data and other facts of which the Administrator has taken official notice. Any order entered in such protest proceedings shall be effective from the date of its issuance unless otherwise provided in such order.

§ 1300.239. *Treatment of protest as petition for amendment or for adjustment or other relief.*—Any protest filed against a provision of a maximum rent regulation may, in the discretion of the Administrator, be treated not only as a protest but also as a petition for amendment of the regulation protested, or as a petition for adjustment or other relief pursuant thereto, when the facts produced in connection with the protest justify such treatment.

§ 1300.240. *Transcript for judicial review.*—The transcript for judicial review shall include:

(a) The designation of the defense-rental area;

(b) The rent declaration;

(c) The maximum rent regulation or order against a provision of which the protest was filed;

(d) The protest;

(e) A statement setting forth, as far as practicable, the economic data and other facts of which the Administrator has taken official notice; and

(f) Such other portions of the proceedings in connection with the protest as are material under the complaint.

SUBPART D—INTERPRETATIONS

§ 1300.241. *Interpretations.*—An interpretation given by an officer or employee of the Office of Price Administration with respect to any provision of the act or any maximum rent regulation or order thereunder, will be regarded by the Office of Price Administration as official only if such interpretation was requested and issued in accordance with §§ 1300.242 to 1300.244, inclusive, of this regulation. Action taken in reliance upon and in conformity with an official interpretation and prior to any revocation or modification thereof or to any superseding thereof by regulation, order or amendment, shall constitute action in good faith pursuant to the provision of the act, or of the regulation or order to which such official interpretation relates. An official interpretation shall be applicable only with re-

spect to the particular person to whom, and to the particular factual situation with respect to which, it is given unless issued as an interpretation of general applicability.

§ 1300.242 *Requests for interpretations: Form and contents.*— Any person desiring an official interpretation of the Emergency Price Control Act of 1942, or of any maximum rent regulation or order thereunder, shall make a request in writing for such interpretation. Such request shall set forth in full the factual situation out of which the interpretative question arises and shall, so far as practicable, state the names and post office addresses of the persons and the location of the housing accommodations involved. If the inquirer has previously requested an interpretation on the same or substantially the same facts, his request shall so indicate and shall state the official or office to whom his previous request was addressed. No interpretation shall be requested or given with respect to any hypothetical situation or in response to any hypothetical question.

§ 1300.243 *Interpretation to be written: Authorized officials.*— Official interpretations shall be given only in writing, signed by one of the following officers of the Office of Price Administration: the Administrator, the general counsel, any associate or assistant general counsel, any regional attorney, any regional rent attorney, any chief attorney for a State or district or defense-rental area office, and any district rent attorney: *Provided*, That interpretations of general applicability shall be given only by the Administrator, the general counsel, or any associate or assistant general counsel.

§ 1300.244 *Revocation or modification of interpretations.*—Any official interpretation, whether of general applicability or otherwise, may be revoked or modified by a publicly announced statement by any official authorized to give interpretations of general applicability or by a statement or notice by the Administrator or general counsel published in the Federal Register. An official interpretation addressed to a particular person may also be revoked or modified at any time by a statement in writing mailed to such person and signed by the general counsel or any associate or assistant general counsel. An official interpretation addressed to a particular person by a regional attorney, a regional rent attorney, or a chief rent attorney for a defense-rental area office may also be revoked or modified at any time by a statement in writing mailed to such person and signed by the attorney who issued it or by his successor.

SUBPART E—MISCELLANEOUS PROVISIONS AND DEFINITIONS

§ 1300.245 *Filing of notices, etc.*—All notices, reports, registration statements and other documents which a landlord is required to file pursuant to the provisions of any maximum rent regulation shall be filed with the appropriate defense-rental area office, unless otherwise provided in such maximum rent regulation or in this regulation.

§ 1300.246 *Service of papers.*—Notices, orders and other process and papers may be served personally or by leaving a copy thereof at the residence or principal office or place of business of the person to be served, or by mail, or by telegraph. When service is made personally or by leaving a copy at the residence or principal office or place of business, the verified return of the person serving or leaving the copy shall be proof of service. When service is by registered mail or telegraph the return post office receipt or telegraph receipt shall be proof of service. When service is by unregistered mail, an affidavit that the document has been mailed shall be proof of service.

§ 1300.247. *Action by representative.*—Any action which by this regulation is required of, or permitted to be taken by a landlord may, unless otherwise expressly stated, be taken on his behalf by any person whom the landlord has by written power of attorney authorized to represent him. Such power of attorney, signed by the landlord, shall be filed at the time such action on his behalf is taken.

§ 1300.248. *Secretary: Office hours.*—The office of the Secretary, Office of Price Administration, Washington, D. C., shall be open every day except Sunday from 9 a. m. until 5 p. m. Any person desiring to file any papers, or to inspect any documents filed with such office at any time other than the regular office hours stated, may file a written application with the Secretary, requesting permission therefor.

§ 1300.249. *Confidential information, inspection of documents filed with Secretary.*—Protests and all papers filed by protestants in connection therewith are public records, open to inspection in the office of the Secretary upon such reasonable conditions as the Secretary may prescribe. Except as provided above, confidential information filed with the Office of Price Administration will not be disclosed, unless the Administrator determines the withholding thereof to be contrary to the interests of the national defense and security.

§ 1300.250. *Former employees not to be representative.*—No former officer or employee of the Office of Price Administration shall, within two years after the termination of his employment, be permitted to act as agent, attorney, or representative of any person in connection with any protest, petition for amendment, application for review,

petition for adjustment or other relief or other proceeding before the Office of Price Administration: *Provided*, That this provision shall not be construed to prohibit a person who performs services for the Office of Price Administration without pay, or as a part-time employee, from acting as such agent, attorney, or representative in a matter which was not pending before the Office of Price Administration during the period of employment of such person.

§ 1300.251. *Definitions.*—As used in this regulation, unless the context otherwise requires, the terms:

(a) "Act" means the Emergency Price Control Act of 1942 (Public Law 421, 77th Cong.).

(b) "Administrator" means the Price Administrator of the Office of Price Administration or such person or persons as he may appoint or designate to carry out any of the duties delegated to him by the Act.

(c) "Federal Register" means the publication provided for by the Act of July 26, 1935 (49 Stat. 500), as amended.

(d) "Maximum rent regulation" means any regulation establishing a maximum rent.

(e) "Maximum rent" means the maximum rent established by any maximum rent regulation or order for the use of housing accommodations within any defense-rental area.

(f) "Date of issuance," with respect to a maximum rent regulation, means the date on which such maximum rent regulation is filed with the Division of the Federal Register.

(g) "Person" includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative of any of the foregoing, and includes the United States or any agency thereof, or any other government, or any of its political subdivisions, or any agency of any of the foregoing.

(h) "Protestant" means a person subject to any provision of a maximum rent regulation or order who files a protest in accordance with Section 203 (a) of the Act.

(i) "Landlord" includes an owner, lessor, sublessor, assignee or other person receiving or entitled to receive rent for the use or occupancy or any housing accommodations, or an agent of any of the foregoing.

(j) "Tenant" includes a subtenant, lessee, sublessee, or other person entitled to the possession or to the use or occupancy of any housing accommodations.

(k) "Housing accommodations" means any building, structure, or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes, together with all privileges, services, furnishing, furniture, equipment,

facilities and improvements connected with the use or occupancy of such property.

(l) "Defense-rental area" means the District of Columbia and any area designated by the Administrator as an area where defense activities have resulted or threaten to result in an increase in the rents for housing accommodations inconsistent with the purposes of the Act.

(m) "Rent director" means the person designated by the Administrator as director of any defense-rental area or such person or persons as may be designated to carry out any of the duties delegated to the rent director by the Administrator.

(n) "Regional administrator" means the person designated by the Administrator as administrator of any regional office established by the Office of Price Administration or such person or persons as may be designated to carry out any of the duties delegated to the regional administrator by the Administrator.

§ 1300.252. *Amendment of this regulation.*—Any provision of this regulation may be amended or revoked by the Administrator at any time. Such amendment or revocation shall be published in the FEDERAL REGISTER and shall take effect upon the date of its publication, unless otherwise specified therein.

§ 1300.253. *Effective date of Revised Procedural Regulation No. 3.*—Sections 1300.209 and 1300.210 of this regulation are applicable to petitions for adjustment or other relief which are denied in whole or in part by the rent director, or to orders entered by the rent director pursuant to § 1300.207 of this regulation, on or after the effective date of this regulation. Protests against such denials or orders entered prior to February 1, 1943, shall be filed and acted upon pursuant to the applicable provisions of Procedural Regulation No. 3 as heretofore and such provisions are continued in effect for this purpose except that such protests properly addressed to the appropriate Regional Office, bearing a postmark dated within the applicable sixty-day period specified in Procedural Regulation No. 3 but received after the expiration thereof, shall be deemed to have been filed on the date of the postmark. This regulation shall become effective February 1, 1943.

Issued this 12th day of January 1943.

LEON HENDERSON,
Administrator.

U. S. GOVERNMENT PRINTING OFFICE: 1943